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PROCEEDINGS
AND
DEBATES
OF THE
CONVENTION
OF

NORTH-CAROLINA,

Convened at Hillsborough, on Monday the 21st Day of July, 1788, for the Purpose of deliberating and determining on the CONSTITUTION recommended by the General Convention at Philadelphia, the 17th Day of September, 1787.

TO WHICH IS PREFIXED
The Said CONSTITUTION.

EDENTON.

PRINTED BY HODGE & WILLS, Printers to the State.

M,DCC,LXXXIX.

T H E

N . S T I T U T I O N

O F T H E

UNITED STATES OF AMERICA.

P R E A M B L E.

WE, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

A R T I C L E I.

H O U S E O F R E P R E S E N T A T I V E S.

Section I. **A**LL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section II. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, seven years a citizen of the United States, and when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included in this union, according to their respective numbers, determined by adding to the whole

sons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New-Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New-Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North-Carolina five, South-Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

S E N A T E.

Sec. III. The Senate of the United States shall be composed of two Senators from each state, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, but the third may be chosen every second year; and when vacancies happen by resignation, or otherwise, during the term of any Senator, the Executive of the Legislature of any state, the Executive may make temporary appointments until the next meeting of the Legislature, which shall then fill the vacancies.

no Senator who shall not have attained to the age of thirty years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief-Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Sec. IV. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

GENERAL CONGRESS.

The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sec. V. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy—And the yeas and nays of the members of either House, on any question,

tion, shall, at the desire of one-fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Secl. VI. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House, during his continuance in office.

POWERS OF CONGRESS.

Secl. VII. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States: If he approve he shall sign it, but if not, he shall return it, with objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days

days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return—in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. VIII. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States: But all duties, imposts and excises shall be uniform throughout the United States—To borrow money on the credit of the United States—To regulate commerce with foreign nations, and among the several states, and with the Indian tribes—To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States—To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures—To provide for the punishment of counterfeiting the securities and current coin of the United States—To establish post-offices and post-roads—To promote the progress of science and useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writings and discoveries—To constitute tribunals inferior to the Supreme Court—To define and punish piracies and felonies committed on the high seas, and offences against the law of nations—To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water—To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years—To provide and maintain a navy—To make rules for the government and regulation of the land and naval forces—To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions—To provide for organizing, arming and disciplining

disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress—To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

RESTRICTIONS UPON CONGRESS.

SECT. IX. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States;

And

And no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title, of any kind whatever, from any King, Prince, or foreign state.

RESTRICTIONS UPON RESPECTIVE STATES.

Seç. X. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports and exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and controul of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

A R T I C L E II.

P R E S I D E N T.

Seç. I. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress: But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign

and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list, the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors, shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.

The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person, except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be encreased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation :

" I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Sec. II. The President shall be Commander in Chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States ; he may require the opinion, in writing, of the principal officer in each of the Executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur : And he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

Sec. III. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient ; he may, on extraordinary occasions, convene both Houses, or either of them, and in
case

case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Seçt. IV. The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III. JUDICIARY.

Seçt. I. The Judicial power of the United States shall be vested in one Supreme Court, and in such Inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and Inferior Courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Seçt. II. The Judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority—To all cases affecting Ambassadors, other public Ministers and Consuls—To all cases of admiralty and maritime jurisdiction—To controversies to which the United States shall be a party—To controversies between two or more states—between a state and citizens of another state—between citizens of different states—between citizens of the same state claiming lands under grants of different states—and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the
state

state where the said crime shall have been committed ;— but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Seçt. III. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court.

The Congress shall have power to declare the punishment of treason ; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

A R T I C L E IV.

Seçt. I. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state : And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Seçt. II. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the Executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up, on claim of the party to whom such service or labour may be due.

G E N E R A L R E G U L A T I O N S.

Seçt. III. New states may be admitted by the Congress into this union ; but no new state shall be formed or erected within the jurisdiction of any other state ; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the Legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Sect. IV. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

ARTICLE V.

AMENDMENTS PROVIDED FOR.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several states, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several states, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

GENERAL REGULATIONS.

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every state shall be bound thereby; any thing in the Constitution or laws of any state to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state Legislatures, and all Executive

Executive and Judicial officers, both of the United States, and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

D O N E in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and Deputy from Virginia

NEW-HAMPSHIRE,

John Langdon, Nicholas Gilman.

MASSACHUSETTS,

Nathaniel Gorham, Rufus King.

CONNECTICUT,

William Samuel Johnson, Roger Sherman

NEW-YORK,

Alexander Hamilton.

NEW-JERSEY,

William Livingston, David Brearley, William Patterson,

Jonathan Dayton.

PENNSYLVANIA,

Benjamin Franklin, Thomas Mifflin, Robert Morris, George

Clymer, Thomas Fitzsimons, Jared Ingersoll, James

Wilson, Gouverneur Morris.

DELAWARE,

George Read, Gunning Bedford, jun. John Dickenson,

Richard Bassett, Jacob Broom.

MARYLAND,

James M'Henry, Daniel of St. Thomas Jennifer, Daniel

Carrol.

VIRGINIA,

John Blair, James Madison, jun.

NORTH-

NORTH-CAROLINA,

William Blount, Richard Dobbs Spaight, Hugh Williamson.

SOUTH-CAROLINA,

John Rutledge, Charles C. Pinckney, Charles Pinckney, Pierce Butler.

GEORGIA,

*William Few, Abraham Baldwin.**Attest.* WILLIAM JACKSON, SECRETARY.

IN C O N V E N T I O N,

MONDAY, *September 17, 1787.*

P R E S E N T,

The States of New-Hampshire, Massachusetts, Connecticut, Mr. *Hamilton* from New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia.

Resolved,

THAT the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each state by the people thereof, under the recommendation of its Legislature, for their assent and ratification; and that each Convention assenting to, and ratifying the same, should give notice thereof to the United States in Congress assembled.

Resolved, That it is the opinion of this Convention, that as soon as the Conventions of nine states shall have ratified this Constitution, the United States in Congress assembled should fix a day on which Electors should be appointed by the states which shall have ratified the same, and a day on which the Electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution. That after such publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the day fixed for the election of the President.

ident, and should transmit their votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled: That the Senators and Representatives should convene at the time and place assigned: That the Senators and Representatives should appoint a President of the Senate, for the sole purpose of receiving, opening and counting the votes for President: And, that after he shall be chosen, the Congress, together with the President, should without delay, proceed to execute this Constitution.

By the unanimous order of the Convention,

GEORGE WASHINGTON, PRESIDENT,

WILLIAM JACKSON, *Secretary.*

IN CONVENTION, SEPTEMBER 17, 1787.

S I R,

WE have now the honour to submit to the consideration of the United States in Congress assembled, that constitution which has appeared to us the most adviseable.

The friends of our country have long seen and desired, that the power of making war, peace and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities should be fully and effectually vested in the general government of the union: but the impropriety of delegating such extensive trust to one body of men is evident,—hence results the necessity of a different organization.

It is obviously impracticable in the federal government of the states, to secure all right of independent sovereignty to each, and yet provide for the interest and safety of all—Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject, we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state

in the Convention to be less rigid on points of inferior magnitude than might have been otherwise expected; and thus the Constitution which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every state is not, perhaps, to be expected; but each will doubtless consider, that had her interests been alone consulted, the consequences might have been particularly disagreeable or injurious to others: That it is liable to as few exceptions as could reasonably have been expected, we hope and believe: That it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect,

We have the honour to be,

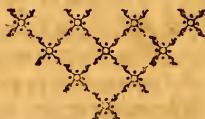
Sir, your Excellency's most obedient,

And humble servants,

GEORGE WASHINGTON, *President.*

By the unanimous order of the Convention.

His Excellency the President of Congress.





P R O C E E D I N G S

A N D

D E B A T E S

O F T H E

C O N V E N T I O N

O F

N O R T H - C A R O L I N A.

AT a Convention, begun and held at Hillsborough, the 21st day of July, in the year of our Lord one thousand seven hundred and eighty-eight, and of the independence of America the thirteenth, in pursuance of a resolution of the last General Assembly, for the purpose of deliberating and determining on the proposed plan of Federal Government—

A majority of those who were duly elected as Members for this Convention, being met at the Church, they proceeded to the election of a President, when his Excellency SAMUEL JOHNSTON, Esquire, was unanimously chosen, and conducted to the chair accordingly.

The House then elected Mr. John Hunt and Mr. James Taylor, Clerks to the Convention ; and also appointed Door-Keepers, &c.

The House then appointed a select committee to prepare and propose certain rules and regulations for the government of the Convention in the discussion of the Constitution.

The

The committee consisted of Messrs. Davie, Person, Iredell, I. McDonald, Battle, Spaight, and the Honourable Samuel Spencer, Esquire.

The Convention then appointed a committee of three Members from each district, as a committee of privileges and elections, consisting of Messrs. Spencer, Irwin, Caldwell, Person, A. Mebane, Joseph Taylor, McDowall, J. Brown, J. Johnston, Davie, Peebles, E. Gray, Gregory, Iredell, Cabarrus, I. G. Blount, Keais, B. Williams, T. Brown, MacLaine, Forster, Clinton, J. Willis, Grove, J. Stewart, Martin and Tipton.

The Convention then adjourned till to-morrow morning.

T U E S D A Y, J U L Y 22, 1788.

The Convention met according to adjournment.

The committee appointed for that purpose, reported certain rules and regulations for the government of the Convention; which were twice read, and, with the exception of one article, were agreed to, and are as follow, viz.

1. When the President assumes the chair, the Members shall take their seats.

2. At the opening of the Convention each day, the minutes of the preceding day shall be read, and be in the power of the Convention to be corrected, after which any business addressed to the chair may be proceeded upon.

3. No Member shall be allowed to speak but in his place, and after rising and addressing himself to the President, shall not proceed until permitted by the President.

4. No Member speaking shall be interrupted but by a call to order by the President, or by a Member through the President.

5. No person shall pass between the President and the person speaking.

6. No person shall be called upon for any words of heat but on the day on which they were spoken.

7. No Member to be referred to in debate by name.

8. The President shall be heard without interruption, and when he rises, the member up shall sit down.

9. The President himself, or by request, may call to order

order any Member who shall transgress the rules ; if a second time, the President may refer to him by name ; the Convention may then examine and censure the Member's conduct, he being allowed to extenuate or justify.

10. When two or more Members are up together, the President shall determine who rose first.

11. A motion made and seconded, shall be repeated by the President. A motion shall be reduced to writing if the President requires it. A motion may be withdrawn by the Member making it, before any decision is had upon it.

12. The name of him who makes, and the name of him who seconds, a motion, shall be entered upon the minutes.

13. No Member shall depart the service of the House without leave.

14. Whenever the House shall be divided upon any question, two or more Tellers shall be appointed by the President, to number the Members on each side.

15. No Member shall come into the House, or remove from one place to another, with his hat on, except those of the Quaker profession.

16. Every Member of a committee shall attend at the call of his Chairman.

17. The yeas and nays may be called and entered on the minutes, when any two members require it.

18. Every Member actually attending the Convention, shall be in his place at the time to which the Convention stands adjourned, or within half an hour thereof.

Mr. *Lenoir* moved, and was seconded by Mr. *Person*, that the return for Dobbs county should be read ; which was accordingly read : Whereupon Mr. *Lenoir* presented the petition of sundry of the inhabitants of Dobbs county, complaining of an illegal election in the said county, and praying relief ; which being also read, on motion of Mr. *Lenoir*, seconded by Mr. *Davie*, Resolved, That the said petition be referred to the committee of elections.

Mr. *Spaight* presented the deposition of Benjamin Caswell, Sheriff of Dobbs county, and a copy of the poll of an election held in the said county for members to this Convention ; and the depositions of William Croom, Neil Hopkins,

Hopkins, Robert White, John Hartsfield, Job Smith and Frederick Baker ; which being severally read, were referred to the committee of elections.

Mr. *Cabarrus* presented the depositions of Charles Markland, jun. and Luther Spalding, relative to the election of Dobbs county ; which being read, were referred to the committee of elections.

The Convention then adjourned to ten o'clock to-morrow morning.

W E D N E S D A Y, J U L Y 23, 1788.

The House met according to adjournment.

Mr. *Gregory*, from the committee of elections, to whom were referred the return from Dobbs county, and sundry other papers, and the petition of sundry of the inhabitants of Dobbs county relative to the election of the said county, delivered in a report ; which being read, was agreed to in the following words, *viz.*

Resolved, That it is the opinion of this committee, that the sitting members returned from the county of Dobbs, vacate their seats, as it does not appear that a majority of the county approved of a new election under the recommendation of his Excellency the Governor, but the contrary is more probable.

That it appears to this committee, that there was a disturbance and riot at the first election (which was held on the days appointed by the resolve of the General Assembly) before all the tickets could be taken out of the box, and the box was then taken away by violence, at which time it appears there were a sufficient number of tickets remaining in the box to have given a majority of the whole poll to five others of the candidates, besides those who had a majority of the votes at the time when the disturbance and riot happened. It is therefore the opinion of this committee, that the Sheriff could have made no return of any five Members elected ; nor was there any evidence before the committee by which they could determine with certainty, which candidates had a majority of votes of the other electors.

The committee are therefore of opinion that the first election is void, as well as the latter.

On

On a motion made by Mr. *Galloway*, seconded by Mr. *Macon*,

Resolved, That the Bill of Rights and Constitution of this state, the Articles of Confederation, the resolve of Congress of the 21st of February, 1787, recommending a Convention of Delegates to meet at Philadelphia the 2d Monday in May, 1787, for the purpose of revising the said articles of confederation, together with the act of Assembly of this state, passed at Fayetteville the 6th day of January, 1787, entitled "An act for appointing Deputies from this state to a Convention proposed to be held in the city of Philadelphia in May next, for the purpose of revising the federal Constitution:" As also the resolve of Congress of the 28th September last accompanying the report of the federal Convention, together with the said report, and the resolution of the last General Assembly, be now read.

The Bill of Rights and Constitution of this state, the Articles of Confederation, the act of Assembly of this state above referred to, and the resolution of Congress of the 28th September last, were accordingly read.

The Honourable the President then laid before the Convention official accounts of the ratification of the proposed federal Constitution by the states of Massachusetts and South-Carolina; which were ordered to be filed with the Secretary, subject to the perusal of the members.

Mr. *James Galloway* moved that the Constitution should be discussed clause by clause.

Mr. *Willie Jones* moved that the question upon the Constitution should be immediately put. He said that the Constitution had so long been the subject of the deliberation of every man in this country, and that the members of the Convention had had such ample opportunity to consider it, that he believed every one of them was prepared to give his vote then upon the question: That the situation of the public funds would not admit of lavishing the public money, but required the utmost economy and frugality: That as there was a large representation from this state, an immediate decision would save the country a considerable sum of money. He thought it therefore prudent to put the question immediately.

He was seconded by Mr. *Person*, who added to the reasoning of Mr. *Jones*, that he should be sorry if any man had
come

come hither without having determined in his mind a question which must have been so long the object of his consideration.

Mr. *Iredell* then arose and addressed the President thus :

Mr. President, I am very much surprised at the motion which has been made by the gentleman from Halifax. I am greatly astonished at a proposal to decide immediately, without the least deliberation, a question which is perhaps the greatest that ever was submitted to any body of men. There is no instance of any Convention upon the continent, in which the subject has not been fully debated, except in those states which adopted the Constitution unanimously. If it be thought proper to debate at large an act of Assembly, trivial in its nature, and the operation of which may continue but a few months, are we to decide on this great and important question without a moment's consideration? Are we to give a dead vote upon it? If so, I would wish to know why we are met together? If it is to be resolved now by dead votes, it would have been better that every elector, instead of voting for persons to come here, should in their respective counties have voted or balloted for or against the Constitution. A decision by that mode would have been as rational and just as by this, and would have been better on economical principles, as it would have saved the public the expence of our meeting here. This is a subject of great consideration. It is a Constitution which has been formed after much deliberation. It has had the sanction of men of the first characters for their probity and understanding. It has also had the solemn ratification of ten states in the union. A Constitution like this, Sir, ought not to be adopted or rejected in a moment. If in consequence of either we should involve our country in misery and distress, what excuse could we make for our conduct? Is it reconcileable with our duty to our constituents? Would it be a conscientious discharge of that trust which they have so implicitly reposed in us? Shall it be said, Sir, of the Representatives of North-Carolina, that near three hundred of them, assembled for the express purpose of deliberating upon the most important question that ever came before a people, refused to discuss it, and discarded all reasoning as useless? It is undoubtedly to be lamented that any addition should be
made

made to the public expence, especially at this period when the public funds are so low ; but if it be ever necessary on any occasion, it is necessary on this, when the question perhaps involves the safety or ruin of our country. For my own part I should not choose to determine on any question without mature reflection, and on this occasion my repugnance to a hasty decision is equal to the magnitude of the subject. A gentleman has said, he should be sorry if any Member had come here without having determined in his mind on a subject he had so long considered. I should be sorry, Sir, that I could be capable of coming to this House predetermined for or against the Constitution. I readily confess my present opinion is strongly in its favour. I have listened to every objection that I had an opportunity of hearing with attention ; but have not yet heard any that I thought would justify its rejection, even if it had not been adopted by so many states. But notwithstanding this favourable opinion I entertain of it, I have not come here resolved at all events to vote for its adoption. I have come here for information, and to judge, after all that can be said upon it, whether it really merits my attachment or not. My constituents did me the honour to elect me unanimously, without the least solicitation on my part. They probably chose me because my sentiments were the same with their own. But highly as I value this honour, and much as I confess my ambition prompted me to aspire to it, had I been told that I should not be elected unless I promised to obey their directions, I should have disdained to serve on such dishonourable terms. Sir, I shall vote perfectly independent, and shall certainly avow a change of my present opinion, if I can be convinced it is a wrong one. I shall not, in such a case, be restrained by the universal opinion of the part of the country from which I came ; I shall not be afraid to go back and tell my constituents, " Gentlemen, I have been convinced I was in
 " an error. I found, on consideration, that the opinion
 " which I had taken up, was ill founded, and have voted
 " according to my sincere sentiments at the time, though
 " contrary to your wishes." I know that the honour and integrity of my constituents are such, that they would approve of my acting on such principles, rather than any
 D other.

other. They are the principles, however, I think it my duty to act upon, and shall govern my conduct.

This constitution ought to be discussed in such a manner that every possible light may be thrown upon it. If those gentlemen who are so sanguine in their opinion that it is a bad government, will freely unfold to us the reasons on which their opinion is founded, perhaps we may all concur in it. I flatter myself that this Convention will imitate the conduct of the Conventions of other states, in taking the best possible method of considering its merits, by debating it article by article. Can it be supposed that any gentlemen here are so obstinate and tenacious of their opinion, that they will not recede from it when they hear strong reasons offered? Has not every gentleman here almost, received useful knowledge from a communication with others? Have not many of the Members of this House, when Members of Assembly, frequently changed their opinions on subjects of legislation? If so, surely a subject of so complicated a nature, and which involves such serious consequences as this, requires the most ample discussion, that we may derive every information that can enable us to form a proper judgment. I hope, therefore, that we shall imitate the laudable example of the other states, and go into a committee of the whole House, that the Constitution may be discussed clause by clause.

I trust we shall not go home and tell our constituents, that we met at Hillsborough; were afraid to enter into a discussion of the subject; but precipitated a decision without a moment's consideration.

Mr. *Willie Jones*—Mr. President, My reasons for proposing an immediate decision were, that I was prepared to give my vote, and believed that others were equally prepared as myself. If gentlemen differ from me in the propriety of this motion, I will submit. I agree with the gentleman, that economical considerations are not of equal importance with the magnitude of the subject. He said, that it would have been better at once for the electors to vote in their respective counties than to decide it here without discussion. Does he forget that the act of Assembly points out another mode?

Mr. *Iredell* replied, that what he meant, was, that the Assembly might as well have required that the elec-

tors should vote or ballot for or against the Constitution in their respective counties, as for the Convention to decide it in this precipitate manner.

Mr. *James Galloway*—Mr. President, I had no supposition that the gentleman on my right [Mr. Jones] was afraid of a discussion: It is not so with me, nor do I believe that it is so with any gentleman here. I do not like such reflections, and am surprised that gentlemen should make them.

Mr. *Iredell* declared, that he meant not to reflect on any gentleman; but, for his part, he would by no means choose to go home and tell his constituents that he had voted without any previous consideration.

After some desultory conversation the Convention adjourned till to-morrow, ten o'clock.

T H U R S D A Y, J U L Y 24, 1788.

The Convention met according to adjournment.

On a motion made by Mr. *Bloodworth*, and seconded by Mr. *Maclaine*,

Resolved, That the special return made by the Sheriff of New-Hanover county, of the election for Members of this Convention, be referred to the committee of elections.

On a motion made by Mr. *Person*, and seconded by Mr. *Iredell*,

Resolved, That the return for a Member for the town of Fayetteville, be referred to the committee of elections.

Reverend Mr. *Caldwell*—Mr. President, The subject before us is of a complicated nature. In order to obviate the difficulty attending its discussion, I conceive that it will be necessary to lay down such rules or maxims as ought to be the fundamental principles of every free government; and after laying down such rules, to compare the Constitution with them, and see whether it has attended to them: For if it be not founded on such principles, it cannot be proper for our adoption. [Here he read those rules which he said appeared to him most proper.]

Mr. *James Galloway*—Mr. President, I had the honour yesterday of proposing the mode which I thought most eligible

eligible for our proceeding. I wish the subject to be fairly, coolly, and candidly discussed; that we may not go away without knowing why we came hither. My intention is, that we should enter into a committee of the whole House, where we shall be at liberty to discuss it. Though I do not object to the proposition of the Honourable Member, as the ground-work of our proceeding, I hope he will withdraw his motion, and I shall second him in the committee.

Mr. *Caldwell* had no objection to that proposition.

Mr. *Person* opposed the motion of entering into a committee. He conceived it would be an useless waste of time, as they would be obliged to reconsider the whole Constitution in Convention again.

Mr. *Davie* largely expatiated on the necessity of entering into a committee. He said that the Legislature in voting to large a representation, did not mean that they should go away without investigating the subject, but that their collective information should be more competent to a just decision. That the best means was, to deliberate and confer together like plain, honest men. He did not know how the ardour of opposition might operate upon *some* gentlemen, yet he trusted that others had temper and moderation. He hoped that the motion of the member from Rockingham would be agreed to, and that the Constitution would be discussed clause by clause. He then observed, that if they laid down a number of original principles, they must go through a double investigation. That it would be necessary to establish these original principles and compare them with the Constitution. That it was highly improbable that they should agree on those principles. That he had a respect for the understanding of the Honourable Member, and trusted he would reflect, that difference in opinion arose from the nature of things; and that a great deal of time might be taken up to no purpose, if they should neither agree on those principles nor their application. He said he hoped they would not treat this important business like a military enterprize, but proceed upon it like a deliberative body, and that the debates would be conducted with decency and moderation.

The Convention then resolved itself into a committee of the whole House, Mr. *Elisha Battle* in the chair.

Mr.

Mr. Caldwell—Mr. Chairman, Those maxims which I conceive to be the fundamental principles of every safe and free government, are, 1st. A government is a compact between the rulers and the people. 2d. Such a compact ought to be lawful in itself. 3d. It ought to be lawfully executed. 4th. Unalienable rights ought not to be given up if not necessary. 5th. The compact ought to be mutual. And, 6th. It ought to be plain, obvious, and easily understood. Now, Sir, if these principles be just, by comparing the Constitution with them, we shall be able to judge whether it is fit for our adoption.

Mr. Iredell—Mr. Chairman, I concur entirely in the sentiments lately urged by the gentleman from Halifax, and am convinced we shall be involved in very great difficulties if we adopt the principles offered by the gentleman from Guilford. To shew the danger and impolicy of this proceeding, I think I can convince the committee in a moment, that his very first principle is erroneous. In other countries, where the origin of government is obscure, and its formation different from ours, government may be deemed a contract between the rulers and the people. What is the consequence? A compact cannot be annulled but by the consent of both parties; therefore, unless the rulers are guilty of oppression, the people, on the principle of a compact, have no right to new model their government. This is held to be the principle of some monarchical governments in Europe. Our government is founded on much nobler principles. The people are known with certainty to have originated it themselves. Those in power are their servants and agents, and the people without their consent may new model their government whenever they think proper, not merely because it is oppressively exercised, but because they think another form will be more conducive to their welfare. It is upon the footing of this very principle that we are now met to consider of the Constitution before us. If we attempt to lay down any rules here, it will take us as much time to establish their validity as to consider the system itself.

Mr. Caldwell observed, that though this government did not resemble the European governments, it still partook of the nature of a compact. That he conceived those principles which he proposed to be just, but was willing
that

that any others which should be thought better, should be substituted in their place.

Mr. MacLaine—Mr. Chairman, The gentleman has taken his principles from sources which cannot hold here. In England the government is a compact between the King and the people. I hope it is not so here. We shall have no officers in the situation of a King. The people here are the origin of all power. Our governors are elected temporarily. We can remove them occasionally, and put others in their stead. We do not bind ourselves. We are to consider whether this system will promote our happiness.

Mr. Goudy—Mr. Chairman, I wonder that these gentlemen learned in the law should quibble upon words. I care not whether it be called a compact, agreement, covenant, bargain or what : Its intent is a concession of power on the part of the people to their rulers. We know that private interest governs mankind generally. Power belongs originally to the people, but if rulers be not well guarded, that power may be usurped from them. People ought to be cautious in giving away power. These gentlemen say there is no occasion for general rules. Every one has one for himself. Every one has an unalienable right of thinking for himself. There can be no inconvenience from laying down general rules. If we give away more power than we ought, we put ourselves in the situation of a man who puts on an iron glove, which he can never take off till he breaks his arm. Let us beware of the iron glove of tyranny. Power is generally taken from the people by imposing on their understanding or by fetters. Let us lay down certain rules to govern our proceedings. It will be highly proper in my opinion, and I very much wonder that gentlemen should object to it.

Mr. Iredell—Mr. Chairman, The gentleman who spoke last mistook what the gentleman from Wilmington and myself have said. In my opinion there ought to be a line drawn, as accurately as possible, between the power which is given and that which is retained. In this system the line is most accurately drawn by the positive grant of the powers of the general government. But a compact between the rulers and the ruled, which gentlemen compare this government with, is certainly not the principle of our government

government. Will any man say, that if there be a compact, it can be altered without the consent of both parties? Those who govern, unless they grossly abuse their trust (which is held an implied violation of the compact, and therefore a dissolution of it) have a right to say they do not choose the government should be changed. But have any of the officers of our government a right to say so if the people choose to change it? Surely they have not. Therefore, as a general principle, it can never apply to a government where the people are avowedly the fountain of all power. I have no manner of objection to the most explicit declaration that all power depends upon the people, because, though it will not strengthen their rights, it may be a means of fixing them on a plainer foundation. One gentleman has said that we were quibbling upon words. If I know my own heart, I am incapable of quibbling on words. I act on as independent principles as any gentleman upon the floor. If I make use of quibbles, there are gentlemen here who can correct me. If my premises are wrong, let them be attacked. If my conclusions be wrong, let me be put right. I am sorry that in debating on so important a subject, it could be thought that we were disputing about words. I am willing to apply as much time as is necessary for our deliberations. I have no objection to any regular way of discussing the subject; but this way of proceeding will waste time, and not answer any purpose. Will it not be in the power of any gentleman in the course of the debates, to say that this plan militates against those principles which the reverend gentleman recommends? Will it not be more proper to urge its incompatibility with those principles during that discussion, than to attempt to establish their exclusive validity previous to our entering upon the new plan of government? By the former mode, those rules and the Constitution may be considered together. By the latter, much time may be wasted to no purpose. I trust therefore that the reverend gentleman will withdraw his motion.

Mr. *Rutherford*—Mr. Chairman, I conceive those maxims will be of utility. I wish as much as any one, to have a full and free discussion of the subject. To facilitate this desirable end, it seems highly expedient that some ground-work should be laid, some line drawn to guide

guide our proceedings: I trust then, that the reverend gentleman's proposal will be agreed to.

Mr. *Spencer*—I conceive that it will retard the business to accede to the proposal of the learned gentleman. The observation which has been made in its behalf does not apply to the present circumstances. When there is a King or other Governor, there is a compact between him and the people. It is then a covenant; but in this case, in regard to the government which it is proposed we should adopt, there are no governors or rulers, we being the people who possess all power. It strikes me, that when a society of free people agree on a plan of government, there are no governors in existence, but those who administer the government are their servants. Although several of these principles are proper, I hope they will not be part of our discussion; but that every gentleman will consider and discuss the subject with all the candour, moderation, and deliberation which the magnitude and importance of the subject requires.

Mr. *Caldwell* observed, that he would agree that any other word should be substituted to the word compact; but after all that had been said, the Constitution appeared to him to be of the nature of a compact. It could not be fully so called till adopted and put in execution; when so put in execution, there were actual Governors in existence.

Mr. *Davie*—Mr. President, What we have already said, may convince the reverend gentleman what a long time it will take us to discuss the subject in the mode which he has proposed. Those few solitary propositions which he has put on paper, will make but a small part of the principles of this Constitution. I wish the gentleman to reflect how dangerous it is to confine us to any particular rules. This system is most extensive in its nature, involving not only the principles of governments in general, but the complicated principles of federal governments. We should not perhaps in a week lay down all the principles essential to such a Constitution. Any gentleman may, in the course of the investigation, mention any maxims he thinks proper, and compare them with the Constitution. It would take us more time to establish these principles

ciples, than to consider the Constitution itself. It will be wrong to tie any man's hands. I hope the question will be put.

Mr. *Person* insisted on the propriety of the principles, and that they ought to be laid on the table with the Declaration of Rights, Constitution of the state, and the Confederation.

Mr. *Lenoir* approved of the principles, but disapproved of being bound by any rules.

Mr. *Maclaine* was of the same opinion as to the impropriety of being bound.

Mr. *James Galloway* wished to leave the hands of the Members free, but he thought these principles were unexceptionable. He saw no inconvenience in adopting them, and wished they would be agreed to.

Mr. *Lenoir* answered, that the matter had been largely debated. He said, that he thought the previous question ought to be put, whether they should lay down certain principles to be governed by, or leave every man to judge as his own breast suggested.

After some little altercation the previous question was put—For the principles 90. Against them 163. Majority against them 73.

His Excellency Governor *Johnston* then moved to discuss it by sections.—This was opposed because it would take up too much time.

After some altercation about the mode of considering the Constitution, Mr. *Iredell* arose, and spoke as follows:

Mr. President, Whatever delay may attend it, a discussion is indispensable. We have been sent hither by the people to consider and decide this important business for them. This is a sacred trust, the honour and importance of which I hope are deeply impressed on every member here. We ought to discuss this Constitution thoroughly in all its parts. It was useless to come hither, and dishonourable unless we discharge that trust faithfully. God forbid that any one of us should be determined one way or the other. I presume that every man thinks it his duty to hold his mind open to conviction, that whatsoever he may have heard, whether against or for the Constitution, he will recede from his present opinion, if reasons of sufficient validity are offered. The gentleman from Granville has told us, that we had since March to consider it, and

that he hoped every member was ready to give his vote upon it. 'Tis true, we have had since that time to consider it, and I hope every Member has taken pains to inform himself. I trust they have conscientiously considered it, that they have read on both sides of the question, and are resolved to vote according to the dictates of their consciences. I can truly say, that I believe there are few members in this House who have taken more pains to consider it than myself. But I am still by no means confident that I am right. I have scarcely ever conversed on the subject with any man of understanding, who has not thrown some new light upon the subject which escaped me before. Those gentlemen who are so self sufficient, that they believe they are never in the wrong, may arrogate infallibility to themselves, and conclude deliberation to be useless. For my part, I have often known myself to be in the wrong, and have ever wished to be corrected. There is nothing dishonourable in changing an opinion. Nothing is more fallible than human judgment. No gentleman will say that his is not fallible: Mine I am sure has often proved so. The serious importance of the subject merits the utmost attention. An erroneous decision may involve truly awful and calamitous consequences. It is incumbent on us therefore to decide it with the greatest deliberation. The Constitution is at least entitled to a regular discussion. It has had the sanction of many of the best and greatest men upon the continent; of those very men to whom perhaps we owe the privilege of debating now. It has also been adopted by ten states since. Is it probable that we are less fallible than they are? Do we suppose our knowledge and wisdom to be superior to their aggregate wisdom and information? I agree that this question ought to be determined on the footing of reason, and not on that of authority; and if it be found defective and unwise, I shall be for rejecting it; but it is neither decent nor right to refuse it a fair trial. A system supported by such characters merits at least a serious consideration. I hope therefore, that the Constitution will be taken up paragraph by paragraph. It will then be in the power of any gentleman to offer his opinion on every part, and by comparing it with other opinions he may obtain useful information. If the Constitution be so defective as it is represented, then the

enquiry

enquiry will terminate in favour of those who oppose it: But if, as I believe and hope, it be discovered to be so formed as to be likely to promote the happiness of our country, then I hope the decision will be accordingly in its favour. Is there any gentleman so indifferent to an union with our sister states, as to hazard disunion rashly without considering the consequences? Had my opinion been different from what it is, I am sure I should have hesitated and reflected a long time before I had offered it against such respectable authorities. I am sorry for the expence which may be incurred, when the community is so distressed; but this is a trivial consideration compared to the consequences of a rash proceeding upon this important question. Were any member to determine against it without proper consideration, and afterwards upon his return home, on an impartial consideration, to be convinced it was a good system, his reflections on the temerity and precipitation of his conduct might destroy his peace of mind forever. I doubt not the members in general who condemn it, do so from a sincere believe that the system is a bad one: But at the same time, I believe there are many who are ready to relinquish that opinion, if they can be convinced it is erroneous, and that they sincerely wish for a fair and full discussion of the subject. For these reasons I am of opinion that the motion made by the Honourable Member is proper to be adopted.

Mr. *Rutherford* was surprised at the arguments used by gentlemen, and wished to know how they should vote; whether on the paragraphs, and how the report should be made when the committee rose.

His Excellency Governor *Johnston*—If we reject any one part we reject the whole. We are not to *form* a constitution, but to say whether we shall adopt a constitution to which ten states have already acceded. If we think it a bad government, it is not binding on us; we can reject it. If it be proper for our adoption, we may adopt it. But a rejection of a single article, will amount to a rejection of the whole.

Mr. *Rutherford*—The honourable gentleman has mistaken me. Sorry I am that it is so late taken up by North-Carolina, if we are to be influenced and persuaded in this manner. I am unhappy to hear gentlemen of learning and integrity

integrity preach up the doctrine of adoption by ten states. Sir, it is my opinion that we ought to decide it as if no state had adopted it. Are we to be thus intimidated into a measure, of which we may disapprove?

The question was then put, and carried by a great majority, to discuss the Constitution clause by clause.

The preamble of the Constitution was then read.

Mr. Caldwell—Mr. Chairman, If they mean by *We, the People*—the people at large, I conceive the expression is improper. Were not they who framed this Constitution, the Representatives of the Legislatures of the different states? In my opinion they had no power from the people at large to use their name, or to act for them. They were not delegated for that purpose.

Mr. Maclaine—The reverend gentleman has told us, that the expressions, *We, the People*, are wrong, because the gentlemen who framed it, were not the Representatives of the people. I readily grant that they were delegated by states. But they did not think that they were the people, but intended it for the people at a future day. The sanction of the state Legislature was in some degree necessary. It was to be submitted by the Legislatures to the people. So that when it is adopted, it is the act of the people. When it is the act of the people, their name is certainly proper. This is very obvious and plain to any capacity.

Mr. Davie—Mr. Chairman, The observation of the reverend gentleman is grounded, I suppose, on a supposition that the federal Convention exceeded their powers. This objection has been industriously circulated; but I believe, on a candid examination, the prejudice on which this error is founded, will be done away. As I had the honour, Sir, to be a member of the Convention, it may be expected I would answer an objection personal in its nature, and which contains rather a reflection on our conduct, than an objection to the merits of the Constitution. After repeated and decisive proofs of the total inefficiency of our general government, the states deputed the Members of the Convention to *revise* and *strengthen* it: And permit me to call to your consideration, that whatever form of confederate government they might devise, or whatever powers they might propose to give this new government, no part of it was binding until the whole Constitution had received the solemn

solemn assent of the people. What was the object of our
 mission? "To decide upon the most effectual means of re-
 moving the defects of our federal union." This is a
 general, discretionary authority to propose any alteration
 they thought proper or necessary. Were not the state Le-
 gislatures afterwards to review our proceedings? Is it not
 immediately through their recommendation that the plan
 of the Convention is submitted to the people? And this
 plan must still remain a dead letter, or receive its operation
 from the fiat of this Convention. Although the federal
 Convention might recommend the concession of the most
 extensive powers, yet they could not put one of them in
 execution. What have the Convention done that can me-
 rit this species of censure? They have only recommended
 a plan of government containing some additional powers
 to those enjoyed under the present feeble system, amend-
 ments not only necessary, but which were the express ob-
 ject of the deputation. When we investigate this system
 candidly and accurately, and compare all its parts with one
 another, we shall find it absolutely necessary to confirm
 these powers, in order to secure the tranquility of the states
 and the liberty of the people. Perhaps it may be necessa-
 ry to form a true judgment of this important question, to
 state some events, and develope some of those defects
 which gave birth to the late Convention, and which have
 produced this revolution in our federal government. With
 the indulgence of the committee I will attempt this detail
 with as much precision as I am capable of. The general
 objects of the union, are, 1st. To protect us against foreign
 invasion. 2d. To defend us against internal commotions
 and insurrections. 3d. To promote the commerce, agri-
 culture and manufactures of America. These objects are
 requisite to make us a safe and happy people, and they can-
 not be attained without a firm and efficient system of union.

As to the first, we cannot obtain any effectual protec-
 tion from the present Confederation. It is indeed univer-
 sally acknowledged that its inadequacy in this case, is one
 of its greatest defects. Examine its ability to repel
 invasion. In the late glorious war its weakness was une-
 quivocally experienced: It is well known that Congress
 had a *discretionary right* to raise men and money, but they
 had *no power* to do either. In order to preclude the ne-
 cessity of examining the whole progress of its imbeci-
 lity,

ility, permit me to call to your recollection one single instance. When the last great stroke was made which humbled the pride of Britain, and put us in possession of peace and independence, so low were the finances and credit of the United States, that our army could not move from Philadelphia, until the Minister of his most Christian Majesty was prevailed upon to draw bills to defray the expence of the expedition: These were not obtained on the credit or interest of Congress, but by the personal influence of the Commander in Chief. Had this great project miscarried, what fatal events might have ensued? It is a very moderate presumption, that what has once happened may happen again. The next important consideration which is involved in the external powers of the union, are *treaties*. Without a power in the federal government to compel the performance of our engagements with foreign nations, we shall be perpetually involved in destructive wars. The Confederation is extremely defective in this point also. I shall only mention the British treaty, as a satisfactory proof of this melancholy fact. It is well known, that although this treaty was ratified in 1784, it required the sanction of a law of North-Carolina in 1787: And that our enemies, presuming on the weakness of our federal government, have refused to deliver up several important posts within the territories of the United States, and still hold them, to our shame and disgrace. It is unnecessary to reason on facts, the perilous consequences of which must in a moment strike every mind capable of reflection.

The next head under which the general government may be considered, is the regulation of commerce. The United States should be empowered to compel foreign nations into commercial regulations, that were either founded on the principles of justice or reciprocal advantages. Has the present Confederation effected any of these things? Is not our commerce equally unprotected abroad by arms and negotiation? Nations have refused to enter into treaties with us. What was the language of the British Court on a proposition of this kind? Such as would insult the pride of any man of feeling and independence—"You can make engagements, but you cannot compel your citizens to comply with them; we derive greater profits from the present situation of your commerce, than we could expect
 " under

“under a treaty; and you have no kind of power that can compel us to surrender any advantage to you.” This was the language of our enemies; and while our government remains as feeble as it has been, no nation will form any connexion with us, that will involve the relinquishment of the least advantage. What has been the consequence? a general decay of trade, the rise of imported merchandise, the fall of produce, and an uncommon decrease of the value of lands. Foreigners have been reaping the benefits and emoluments which our citizens ought to enjoy. An unjustifiable perversion of justice has pervaded almost all the states, and every thing presenting to our view a spectacle of public poverty and private wretchedness.

While this is a true representation of our situation, can our general government recur to the ordinary expedient of *loans*? During the late war, large sums were advanced to us by foreign states and individuals. Congress have not been enabled to pay even the interest of these debts with honour and punctuality. The requisitions made on the states have been every where unproductive, and some of them have not paid a stiver. These debts are a part of the price of our liberty and independence; debts which ought to be regarded with gratitude and discharged with honour. Yet many of the individuals who lent us money in the hour of our distress, are now reduced to indigence in consequence of our delinquency. So low and hopeless are the finances of the United States, that the year before last Congress were obliged to borrow money even to pay the interest of the principal which we had borrowed before. This wretched resource of turning interest into principal, is the most humiliating and disgraceful measure that a nation could take, and approximates with rapidity to absolute ruin: Yet it is the inevitable and certain consequence of such a system as the existing Confederation.

There are several other instances of imbecility in that system. It cannot secure to us the enjoyment of our own territories, nor even the navigation of our own rivers. The want of power to establish an uniform rule of naturalization through the United States is also no small defect, as it must unavoidably be productive of disagreeable controversies with foreign nations. The general government ought in this, as in every other instance, to possess the means

means of preserving the peace and tranquility of the union. A striking proof of the necessity of this power lately happened in Rhode-Island: A man who had run off with a vessel and cargo, the property of some merchants in Holland, took sanctuary in that place; application was made for him as a citizen of the United Netherlands by the Minister, but as he had taken the oath of allegiance, the state refused to deliver him up, and protected him in his villainy. Had it not been for the peculiar situation of the states at that time, fatal consequences might have resulted from such a conduct, and the contemptible state of Rhode-Island might have involved the whole union in a war.

The encroachments of some states on the rights of others, and of all on those of the confederacy, are incontestible proofs of the weakness and imperfection of that system. Maryland lately passed a law granting exclusive privileges to her own vessels, contrary to the articles of the Confederation: Congress had neither power nor influence to alter it, all they could do, was to send a contrary recommendation. It is provided by the 6th article of the Confederation, that no compact shall be made between two or more states without the consent of Congress; yet this has been recently violated by Virginia and Maryland, and also by Pennsylvania and New-Jersey. North-Carolina and Massachusetts have had a considerable body of forces on foot, and those in this state raised for two years, notwithstanding the express provision in the Confederation that no forces should be kept up by any state in time of peace.

As to internal tranquility, without dwelling on the unhappy commotions in our own back counties, I will only add, that if the rebellion in Massachusetts had been planned and executed with any kind of ability, that state must have been ruined, for Congress were not in a situation to render them any assistance.

Another object of the federal union is, to promote the agriculture and manufactures of the states; objects in which we are so nearly concerned. Commerce, Sir, is the nurse of both. The merchant furnishes the planter with such articles as he cannot manufacture himself, and finds him a market for his produce. Agriculture cannot flourish if commerce languishes; they are mutually dependant on each other. Our commerce, as I have before observed,

observed, is unprotected abroad, and without regulation at home, and in this and many of the states ruined, by partial and iniquitous laws—laws which, instead of having a tendency to protect property and encourage industry, led to the depreciation of the one, and destroyed every incitement to the other—laws which basely warranted and legalised the payment of just debts by *paper*, which represents nothing, or property of very trivial value.

These are some of the leading causes which brought forward this new Constitution. It was evidently necessary to infuse a greater portion of strength into the national government : But Congress were but a single body, with whom it was dangerous to lodge additional powers. Hence arose the necessity of a different organization. In order to form some balance, the departments of government were separated, and as a necessary check the legislative body was composed of *two branches*. Steadiness and wisdom are better ensured when there is a second branch to balance and check the first. The stability of the laws will be greater, when the popular branch, which might be influenced by local views, or the violence of party, is checked by another, whose longer continuance in office will render them more experienced, more temperate and more competent to decide rightly.

The Confederation derived its sole support from the state Legislatures ; this rendered it weak and ineffectual : It was therefore necessary that the foundations of this government should be laid on the broad basis of the people. Yet the state governments are the pillars upon which this government is extended over such an immense territory, and are essential to its existence. The House of Representatives are immediately elected by the people. The Senators represent the sovereignty of the states ; they are directly chosen by the state Legislatures, and no legislative act can be done without their concurrence. The election of the Executive is in some measure under the controul of the Legislatures of the states, the Electors being appointed under their direction.

The difference in point of magnitude and importance in the members of the confederacy, was an additional reason for the division of the Legislature into two branches, and for establishing an equality of suffrage in the Senate. The protection of the small states against the ambition and

influence of the larger members, could only be effected by arming them with an equal power in one branch of the Legislature. On a contemplation of this matter, we shall find, that the jealousies of the states could not be reconciled any other way. The lesser states would never have concurred unless this check had been given them, as a security for their political existence against the power and encroachments of the great states. It may be also proper to observe, that the Executive is separated in its functions from the Legislature as well as the nature of the case would admit, and the Judiciary from both.

Another radical vice in the old system, which was necessary to be corrected, and which will be understood without a long deduction of reasoning, was, that it legislated on states instead of individuals; and that its powers could not be executed but by fire or by the sword; by military force, and not by the intervention of the civil magistrate. Every one who is acquainted with the relative situation of the states, and the genius of our citizens, must acknowledge, that if the government was to be carried into effect by military force, the most dreadful consequences would ensue. It would render the citizens of America the most implacable enemies to one another. If it could be carried into effect against the small states, yet it could not be put in force against the larger and more powerful states. It was therefore absolutely necessary that the influence of the magistrate should be introduced, and that the laws should be carried home to individuals themselves.

In the formation of this system, many difficulties presented themselves to the Convention. Every member saw that the existing system would ever be ineffectual, unless its laws operated on individuals, as military coercion was neither eligible nor practicable. Their own experience was fortified by their knowledge of the inherent weakness of all confederate governments: They knew that all governments merely federal, had been short-lived; or had existed from principles extraneous from their constitutions; or from external causes which had no dependence on the nature of their governments. These considerations determined the Convention to depart from that solecism in politicks, the principle of legislation for states in their political capacities.

The great extent of country appeared to some a formidable difficulty ; but a confederate government appears at least in theory, capable of embracing the various interests of the most extensive territory : Founded on the state governments solely, as I have said before, it would be tottering and inefficient. It became therefore necessary to bottom it on the people themselves, by giving them an immediate interest and agency in the government. There was however, some real difficulty in conciliating a number of jarring interests, arising from the incidental, but unalterable, difference in the states in point of territory, situation, climate, and rivalry in commerce. Some of the states are very extensive, others very limited : Some are manufacturing states, others merely agricultural : Some of these are exporting states, while the carrying and navigation business are in the possession of others. It was not easy to reconcile such a multiplicity of discordant and clashing interests. Mutual concessions were necessary to come to any concurrence. A plan that would promote the exclusive interests of a few states, would be injurious to others. Had each state obstinately insisted on the security of its particular local advantages, we should never have come to a conclusion ; each therefore amicably and wisely relinquished its particular views. The federal Convention have told you, that the Constitution which they formed, “ was the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of their political situation rendered indispensable.” I hope the same laudable spirit will govern this Convention in their decision on this important question.

The business of the Convention was to amend the Confederation by giving it *additional powers*. The present form of Congress being a single body, it was thought unsafe to augment its powers, without altering its organization. The act of the Convention is but a mere proposal, similar to the production of a private pen. I think it a government which, if adopted, will cherish and protect the happiness and liberty of America ; but I hold my mind open to conviction ; I am ready to recede from my opinion if it be proved to be ill-founded. I trust that every man here is equally ready to change an opinion he may have improperly formed. The weakness and inefficiency of the old Confederation

Confederation produced the necessity of calling the federal Convention: Their plan is now before you, and I hope on a deliberate consideration every man will see the necessity of such a system. It has been the subject of much jealousy and censure out of doors. I hope gentlemen will now come forward with their objections, and that they will be thrown out and answered with candour and moderation.

Mr. *Caldwell* wished to know why the gentlemen who were delegated by the states, stiled themselves *We, the People*. He said that he only wished for information.

Mr. *Iredell* answered, that it would be easy to satisfy the gentleman. That the stile *We, the People*, was not to be applied to the Members themselves, but was to be the stile of the Constitution when it should be ratified in their respective states.

Mr. *Joseph Taylor*—Mr. Chairman, The very wording of this Constitution seems to carry with it, an assumed power. *We, the People*, is surely an assumed power. Have they said, *We, the Delegates of the people*? It seems to me, that when they met in Convention they assumed more power than was given them. Did the people give them the power of using their name? This power was in the people: They did not give it up to the Members of the Convention. If therefore they had not this power, they assumed it. It is the interest of every man who is a friend to liberty, to oppose the assumption of power as soon as possible. I see no reason why they assumed this power. Matters may be carried still farther. This is a consolidation of all the states. Had it said, *We, the States*, there would have been a federal intention in it. But, Sir, it is clear that a consolidation is intended. Will any gentleman say that a consolidated government will answer this country? It is too large. The man who has a large estate cannot manage it with convenience. I conceive, that in the present case, a consolidated government can by no means suit the genius of the people. The gentleman from Halifax [Mr. *Davie*] mentioned reasons for such a government. They have their weight no doubt, but at a more convenient time we can shew their futility. We see plainly that men who come from New-England, are different from us: They are ignorant of our situation: They do not know the state of our country: They cannot with safety legislate for

us. I am astonished that the servants of the Legislature of North-Carolina should go to Philadelphia, and instead of speaking of the state of North-Carolina, should speak of the people. I wish to stop power as soon as possible, for they may carry their assumption of power to a more dangerous length. I wish to know where they found the power of saying, *We, the People*, and of consolidating the states.

Mr. *Maclaine*—Mr. Chairman, I confess myself astonished to hear objections to the preamble. They say that the Delegates to the federal Convention assumed powers which were not granted them: That they ought not to have used the words, *We, the People*. That they were not the Delegates of the people is universally acknowledged. The Constitution is only a mere proposal. Had it been binding on us, there might be a reason for objecting. After they had finished the plan, they proposed that it should be recommended to the people by the several state Legislatures. If the people approve of it, it becomes their act. Is not this merely a dispute about words, without any meaning whatever? Suppose any gentleman of this Convention had drawn up this government, and we thought it a good one; we might respect his intelligence and integrity, but it would not be binding upon us. We might adopt it, if we thought it a proper system, and then it would be our act. Suppose it had been made by our enemies, or had dropt from the clouds, we might adopt it if we found it proper for our adoption. By whatever means we found it, it would be our act as soon as we adopted it. It is no more than a blank till it be adopted by the people. When that is done here, is it not the people of the state of North-Carolina that do it, joined with the people of the other states who have adopted it? The expression is then right. But the gentleman has gone further, and says, that the people of New-England are different from us. This goes against the union altogether. They are not to legislate for us; we are to be represented as well as they. Such a futile objection strikes at all union. We know that without union, we should not have been debating now. I hope to hear no more objections of this trifling nature, but that we shall enter into the spirit of the subject at once.

Mr. *Caldwell* observed, that he only wished to know why they had assumed the name of the people.

Mr.

Mr. *James Galloway*—Mr. Chairman, I trust we shall not take up more time on this point. I shall just make a few remarks on what has been said by the gentleman from Halifax. He has gone through our distresses, and those of the other states. As to the weakness of the Confederation, we all know it. A sense of this induced the different states to send Delegates to Philadelphia. They had given them certain powers; we have seen them, they are now upon the table. The result of their deliberations is now upon the table also. As they have gone out of the line which the states pointed out to them, we, the people are to take it up and consider it. The gentlemen who framed it, have exceeded their powers, and very far. They will be able perhaps to give reasons for so doing. If they can shew us any reasons, we will no doubt take notice of them. But, on the other hand, if our civil and religious liberties are not secured, and proper checks provided, we have the power in our own hand to do with it as we think proper. I hope gentlemen will permit us to proceed.

The Clerk then read the first section of the first article.

Mr. *Caldwell*—Mr. Chairman, I am sorry to be objecting; but I apprehend, that all the legislative powers granted by this Constitution, are not vested in a Congress consisting of the Senate and the House of Representatives, because the Vice-President has a right to put a check on it. This is known to every gentleman in the Convention. How can all the legislative powers, granted in that Constitution, be vested in the Congress, if the Vice-President is to have a vote in case the Senate is equally divided? I ask for information, how it came to be expressed in this manner, when this power is given to the Vice-President?

Mr. *MacLaine* declared, that he did not know what the gentleman meant.

Mr. *Caldwell* said, that the Vice-President is made a part of the legislative body, although there was an express declaration, that all the legislative powers were vested in the Senate and House of Representatives, and that he would be glad to know how these things consisted together.

Mr. *MacLaine* expressed great astonishment at the gentleman's criticism. He observed, that the Vice-President had only a casting vote, in case of an equal division in the Senate. That a provision of this kind was to be found in

all deliberative bodies. That it was highly useful and expedient. That it was by no means of the nature of a check which impedes or arrests, but calculated to prevent the operation of the government from being impeded. That if the gentleman could shew any legislative power to be given to any but the two Houses of Congress, his objection would be worthy of notice.

Some other gentlemen said they were dissatisfied with Mr. *Maclaine's* explanation. That the Vice-President was not a Member of the Senate, but an officer of the United States, and yet had a legislative power; and that it appeared to them inconsistent. That it would have been more proper to have given the casting vote to the President.

His Excellency Governor *Johnston* added to Mr. *Maclaine's* reasoning, that it appeared to him a very good and proper regulation. That if one of the Senate was to be appointed Vice-President, the state which he represented would either lose a vote if he was not permitted to vote on every occasion, or if he was he might in some instances have two votes. That the President was already possessed of the power of preventing the passage of a law by a bare majority: Yet laws were not said to be made by the President, but by the two Houses of Congress exclusively.

Mr. *Lencir*—Mr. Chairman, I have a greater objection on this ground, than that which has just been mentioned. I mean, Sir, the legislative power given to the President himself. It may be admired by some, but not by me.—He, Sir, with the Senate, is to make treaties, which are to be the supreme law of the land. This is a legislative power given to the President, and implies a contradiction to that part which says, that all legislative power is vested in the two Houses.

Mr. *Spaight* answered, that it was thought better to put that power into the hands of the Senators as Representatives of the states; that thereby the interest of every state was equally attended to in the formation of treaties; but that it was not considered as a legislative act at all.

Mr. *Iredell*—Mr. Chairman, This is an objection against the inaccuracy of the sentence. I humbly conceive it will appear accurate on a due attention. After a bill is passed by both Houses, it is to be shewn to the President. With-

in a certain time he is to return it. If he disapproves of it, he is to state his objections in writing ; and it depends on Congress afterwards to say, whether it shall be a law or not. Now, Sir, I humbly apprehend, that, whether a law passes by a bare majority, or by two-thirds, which are required to concur after he shall have stated objections, what gives active operation to it is, the will of the Senators and Representatives. The President has no power of legislation. If he does not object, the law passes by a bare majority ; and if he objects, it passes by two-thirds. His power extends only to cause it to be reconsidered, which secures a greater probability of its being good. As to his power with respect to treaties, I shall offer my sentiments on it when we come properly to it.

Mr. *Maclaine* intimated, that if any gentleman was out of order*, it was the gentleman from Wilkes. [Mr. *Lenoir*.] That treaties were the supreme law of the land in all countries, for the most obvious reasons. That laws, or legislative acts, operated upon individuals ; but that treaties acted upon states. That unless they were the supreme law of the land, they could have no validity at all. That the President did not act in this case as a legislator, but rather in his executive capacity.

Mr. *Lenoir* replied, that he wished to be conformable to the rules of the House ; but he still thought the President was possessed of legislative powers, while he could make treaties joined with the Senate.

Mr. *Iredell*—Mr. Chairman, I think the gentleman is in order. When treaties are made, they become as valid as legislative acts. I apprehend, that every act of the government, legislative, executive, or judicial, if in pursuance of a constitutional power, is the law of the land.—These different acts become the acts of the state by the instrumentality of its officers. When, for instance, the Governor of this state grants a pardon, it becomes the law of the land, and is valid. Every thing is the law of land, let it come from what power it will, provided it be consistent with the Constitution.

Mr. *Lenoir* answered, that that comparison did not hold.

Mr.

* Something had been said about order, which was not distinctly heard.

Mr. *Iredell* continued—If the Governor grants a pardon; it becomes a law of the land. Why? Because he has power to grant pardons by the Constitution. Suppose this Constitution is adopted, and a treaty is made—that treaty is the law of the land. Why? Because the Constitution grants the power of making treaties.

Several Members expressed dissatisfaction at the inconsistency (as they conceived it) of the expressions; when

Mr. *James Galloway* observed, that their observations would be made more properly when they come to that clause which gave the casting vote to the Vice-President, and the qualified negative to the President.

The first three clauses of the second section read.

Mr. *Maclaine*—Mr. Chairman, As many objections have been made to biennial elections, it will be necessary to obviate them. I beg leave to state their superiority to annual elections. Our elections have been annual for some years. People are apt to be attached to old customs. Annual elections may be proper in our state governments, but not in the general government. The seat of government is at a considerable distance; and in case of a disputed election, it would be so long before it could be settled, that the state would be totally without representation. There is another reason, still more cogent, to induce us to prefer biennial to annual elections; the objects of state legislation are narrow and confined, and a short time will render a man sufficiently acquainted with them; but those of the general government are infinitely more extensive, and require a much longer time to comprehend them. The Representatives to the general government, must be acquainted not only with the internal situation and circumstances of the United States, but also with the state of our commerce with foreign nations, and our relative situation to those nations. They must know the relative situation of those nations to one another, and be able to judge with which of them, and in what manner our commerce should be regulated. These are good reasons to extend the time of elections to two years. I believe you remember, and perhaps every Member here remembers, that this country was very happy under biennial elections. In North-Carolina the Representatives were formerly chosen by ballot biennially. It was changed under the royal government, and the mode

pointed out by the King. Notwithstanding the contest for annual elections, perhaps biennial elections would still be better for this country. Our laws would certainly be less fluctuating.

Mr. *Shepperd* observed, that he could see no propriety in the friends of the new system making objections, when none were urged by its opposers. That it was very uncommon for a man to make objections and answer them himself: And that it would take an immense time to mention every objection which had been mentioned in the country.

Mr. *MacLaine*—It is determined already by the Convention, to debate the Constitution section by section. Are we then to read it only? Suppose the whole of it is to be passed over without saying any thing, will not that amount to a dead vote? Sir, I am a Member of this Convention, and if objections are made here I will answer them to the best of my ability. If I see gentlemen pass by in silence such parts as they vehemently decry out of doors, or such parts as have been loudly complained of in the country, I shall answer them also.

After some desultory conversation, Mr. *Willie Jones* observed, that he would easily put the friends of the Constitution in a way of discussing it. Let one of them (said he) make objections and another answer them.

Mr. *Davie*—Mr. Chairman, I hope that reflections of a personal nature will be avoided as much as possible. What is there in this business should make us jealous of each other? We are all come hither to serve one common cause of one country. Let us go about it openly and amicably: There is no necessity for the employment of underhanded means. Let every objection be made. Let us examine the plan of government submitted to us thoroughly. Let us deal with each other with candour. I am sorry to see so much impatience so early in the business.

Mr. *Shepperd* answered, that he spoke only because he was averse to unnecessary delays, and that he had no finesse or design at all.

Mr. *Rutherford* wished the system to be thoroughly discussed. He hoped that he should be excused in making a few observations in the Convention after the committee rose, and that he trusted gentlemen would make no reflections.

Mr.

Mr. *Bloodworth* declared, that every gentleman had a right to make objections in both cases, and that he was sorry to hear reflections made.

Mr. *Goudy*—Mr. Chairman, This clause of taxation will give an advantage to some states over the others. It will be oppressive to the southern states. Taxes are equal to our representation. To augment our taxes and encrease our burthens, our negroes are to be represented. If a state has fifty thousand negroes, she is to send one Representative for them. I wish not to be represented with negroes, especially if it encreases my burthens.

Mr. *Davie*—Mr. Chairman, I will endeavour to obviate what the gentleman last up has said. I wonder to see gentlemen so precipitate and hasty on a subject of such awful importance. It ought to be considered, that *some* of us are slow of apprehension, not having those quick conceptions, and luminous understandings, of which other gentlemen may be possessed. The gentleman "does not wish to be represented with negroes." This, Sir, is an unhappy species of population, but we cannot at present alter their situation. The eastern states had great jealousies on this subject: They insisted that their cows and horses were equally entitled to representation; that the one was property as well as the other. It became our duty on the other hand, to acquire as much weight as possible in the legislation of the union; and as the northern states were more populous in whites, this only could be done by insisting that a certain proportion of our slaves should make a part of the computed population. It was attempted to form a rule of representation from a compound ratio of wealth and population; but on consideration it was found impracticable to determine the comparative value of lands, and other property, in so extensive a territory, with any degree of accuracy; and population alone was adopted as the only practicable rule or criterion of representation. It was urged by the Deputies of the eastern states, that a representation of two-fifths would be of little utility, and that their entire representation would be unequal and burthensome: That in a time of war slaves rendered a country more vulnerable, while its defence devolved upon its *free* inhabitants. On the other hand, we insisted that in time of peace, they contributed by their labour to the general wealth as well as other

other members of the community : That as rational beings they had a right of representation, and in some instances might be highly useful in war. On these principles the eastern states gave the matter up, and consented to the regulation as it has been read. I hope these reasons will appear satisfactory. It is the same rule or principle which was proposed some years ago by Congress, and assented to by twelve of the states. It may wound the delicacy of the gentleman from Guilford [Mr. Goudy] but I hope he will endeavour to accommodate his feelings to the interest and circumstances of his country.

Mr. *James Galloway* said, that he did not object to the representation of negroes, so much as he did to the fewness of the number of Representatives. He was surprised how we came to have but five, including those intended to represent negroes : That in his humble opinion North-Carolina was entitled to that number independent of the negroes.

Mr. *Spaight* endeavoured to satisfy him, that the Convention had no rule to go by in this case : That they could not proceed upon the ratio mentioned in the Constitution, till the enumeration of the people was made : That some states had made a return to Congress of their numbers, and others had not : That it was mentioned that we had had time, but made no return : That the present number was only temporary : That in three years the actual census would be taken, and our number of Representatives regulated accordingly.

His Excellency Governor *Johnston* was perfectly satisfied with the temporary number. He said that it could not militate against the people of North-Carolina, because they paid in proportion : That no great inconvenience could happen in three years from their paying less than their full proportion : That they were not very flush of money ; and that he hoped for better times in the course of three years.

The rest of the second section read.

Mr. *Joseph Taylor* objected to the provision made for impeaching. He urged that there could be no security from it, as the persons accused were triable by the Senate, who were a part of the Legislature themselves : That while men were fallible, the Senators were liable to errors, especially in a case where they were concerned themselves.

Mr. *Iredell*—Mr. Chairman, I was going to observe that
this

this clause, vesting the power of impeachment in the House of Representatives, is one of the greatest securities for a due execution of all public offices. Every government requires it. Every man ought to be amenable for his conduct, and there are no persons so proper to complain of the public officers as the Representatives of the people at large. The Representatives of the people know the feelings of the people at large, and will be ready enough to make complaints. If this power were not provided the consequences might be fatal. It will be not only the means of punishing misconduct, but it will prevent misconduct. A man in public office who knows that there is no tribunal to punish him, may be ready to deviate from his duty; but if he knows that there is a tribunal for that purpose, although he may be a man of no principle, the very terror of punishment will perhaps deter him. I beg leave to mention that every man has a right to express his opinion, and point out any part of the Constitution which he either thinks defective, or has heard represented to be so. What will be the consequence if they who have objections do not think proper to communicate them, and they are not to be mentioned by others? Many gentlemen have read many objections, which perhaps have made impressions on their minds, though they are not communicated to us. I therefore apprehend that the Member was perfectly regular in mentioning the objections made out of doors. Such objections may operate upon the minds of gentlemen, who, not being used to convey their ideas in public, conceal them out of diffidence.

Mr. *Bloodworth* wished to be informed, whether this sole power of impeachment given to the House of Representatives, deprived the state of the power of impeaching any of its Members.

Mr. *Spaight* answered, that this impeachment extended only to the officers of the United States. That it would be improper if the same body that impeached, had the power of trying: That therefore the Constitution had wisely given the power of impeachment to the House of Representatives, and that of trying impeachments to the Senate.

Mr. *Joseph Taylor*—Mr. Chairman, The objection is very strong. If there be but one body to try, where are we? If any tyranny or oppression should arise, how are those
who

who perpetrated such oppression, to be tried and punished? By a tribunal consisting of the very men who assist in such tyranny. Can any tribunal be found in any community, who will give judgment against their own actions? Is it the nature of man to decide against himself? I am obliged to the worthy member from New-Hanover for assisting me with objections. None can impeach but the Representatives, and the impeachments are to be determined by the Senators, who are one of the branches of power which we dread under this constitution.

His Excellency Governor *Johnston*—Mr. Chairman, The worthy Member from Granville surprises me by his objection. It has been explained by another Member, that only officers of the United States were impeachable. I never knew any instance of a man being impeached for a legislative act; nay, I never heard it suggested before. No Member of the House of Commons in England has ever been impeached before the Lords, nor any Lord for a legislative misdemeanor. A Representative is answerable to no power but his constituents—He is accountable to no being under heaven, but the people who appointed him.

Mr. *Taylor* replied, that it now appeared to him in a still worse light than before.

Mr. *Bloodworth* observed, that as this was a Constitution for the United States, he should not have made the observation he did, had the subject not been particularly mentioned. That the words, "sole power of impeachment," were so general, and might admit of such a latitude of construction, as to extend to every legislative Member upon the continent, so as to preclude the Representatives of the different states from impeaching.

Mr. *MacLaine*—Mr. Chairman, If I understand the gentleman rightly, he means, that Congress may impeach all the people or officers of the United States. If the gentleman will attend he will see, that this is a government for confederated states; that consequently it can never intermeddle where no power is given. I confess I can see no more reason to fear in this case than from our own General Assembly. A power is given to our own state Senate to try impeachments. Is it not necessary to point out some tribunal to try great offences? Should there not be some mode of punishment for the offences of the officers

of the general government ? Is it not necessary that such officers should be kept within proper bounds ? The officers of the United States are excluded from offices of honour, trust or profit under the United States, on impeachment for, and conviction of, high crimes and misdemeanors. This is certainly necessary. This exclusion from offices is harmless in comparison with the regulation made in similar cases in our own government. Here it is expressly provided how far the punishment shall extend, and that it shall extend no farther. On the contrary, the limits are not marked in our own Constitution, and the punishment may be extended too far. I believe it is a certain and known fact, that Members of the legislative body are never, as such, liable to impeachment, but are punishable by law for crimes and misdemeanors in their personal capacity. For instance, the Members of Assembly are not liable to impeachment, but, like other people, are amenable to the law for crimes and misdemeanors committed as individuals. But in Congress, a Member of either House can be no officer.

Governor *Johnston*—Mr. Chairman, I find that making objections is useful. I never thought of the objection made by the Member from New-Hanover. I never thought that impeachments extended to any but officers of the United States. When you look at the judgment to be given on impeachments, you will see, that the punishment goes no farther than to remove and disqualify civil officers of the United States, who shall, on impeachment, be convicted of high misdemeanors. Removal from office is the punishment—to which is added, future disqualification. How could a man be removed from office who had no office ? An officer of this state is not liable to the United States. Congress could not disqualify an officer of this state. No body can disqualify but that body which creates. We have nothing to apprehend from that article. We are perfectly secure as to this point. I should laugh at any judgment they should give against any officer of our own.

Mr. *Bloodworth*—From the completion of the paragraph, it appeared to me to be applicable only to officers of the United States ; but the gentleman's own reasoning convinces me that he is wrong. He says he would laugh at them. Will the gentleman laugh when the extension
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of their powers takes place ? It is only by our adoption they can have any power.

Mr. *Iredell*—Mr. Chairman, The argument of the gentleman last up, is founded upon misapprehension. Every article refers to its particular object. We must judge of expressions from the subject-matter concerning which they are used. The sole power of impeachment extends only to objects of the Constitution. The Senate shall only try impeachments arising under the Constitution. In order to confirm and illustrate that position, the gentleman who spoke before, explained it in a manner perfectly satisfactory to my apprehension. “Under this Constitution.”—What is the meaning of these words ? They signify, those arising under the government of the United States. When this government is adopted, there will be two governments to which we shall owe obedience.—To the government of the union, in certain defined cases—To our own state government, in every other case. If the general government were to disqualify me from any office which I held in North-Carolina under its laws, I would refer to the Constitution, and say, that they violated it, as it only extended to officers of the United States.

Mr. *Bloodworth*—The penalty is only removal from office. It does not mention from what office. I do not see any thing in the expression that convinces me that I was mistaken. I still consider it in the same light.

Mr. *Porter* wished to be informed if every officer, who was a creature of that Constitution, was to be tried by the Senate ? Whether such officers, and those who had complaints against them, were to go from the extreme parts of the continent to the seat of government to adjust disputes ?

Mr. *Davie* answered, that impeachments were confined to cases under the Constitution, but did not descend to petty offices. That if the gentleman meant, that it would be troublesome and inconvenient to recur to the federal courts in case of oppressions by officers, and to carry witnesses such great distances, that he would satisfy the gentleman, that Congress would remove such inconveniences, as they had the power of appointing inferior tribunals, where such disputes would be tried.

Mr. *J. Taylor*—Mr. Chairman, I conceive that if this Constitution be adopted, we shall have a large number of
officers.

officers in North-Carolina under the appointment of Congress. We shall undoubtedly, for instance, have a great number of tax-gatherers. If any of these officers shall do wrong, when we come to fundamental principles, we find that we have no way to punish them, but by going to Congress at an immense distance, whither we must carry our witnesses. Every gentleman must see in these cases that oppressions will arise. I conceive that they cannot be tried elsewhere. I consider that the Constitution will be explained by the word "sole." If they did not mean to retain a general power of impeaching, there was no occasion for saying the "sole power." I consider therefore that oppressions will arise. If I am oppressed I must go to the House of Representatives to complain. I consider that when mankind are about to part with rights, they ought only to part with those rights which they can with convenience relinquish, and not such as must involve them in distresses.

In answer to Mr. *Taylor*, Mr. *Spaight* observed, that tho' the power of impeachment was given, yet it did not say that there was no other manner of giving redress. That it was very certain and clear, that if any man was injured by an officer of the United States he could get redress by a suit at law.

Mr. *Maclaine*—Mr. Chairman, I confess I never heard before that a tax-gatherer was worthy of impeachment. It is one of the meanest and least offices: Impeachments are only for high crimes and misdemeanors. If any one is injured in his person or property, he can get redress by a suit at law. Why does the gentleman talk in this manner? It shews what wretched shifts gentlemen are driven to. I never heard in my life of such a silly objection. A poor, insignificant, petty officer amenable to impeachment!

Mr. *Iredell*—Mr. Chairman, The objection would be right if, there was no other mode of punishing. But it is evident that an officer may be tried by a court of common law. He may be tried in such a court for common law offences, whether impeached or not. As it is to be presumed that inferior tribunals will be constituted, there will be no occasion for going always to the supreme court, even in case where the federal courts have exclusive jurisdiction. Where this exclusive cognizance is not given them, redress

may be had in the common law courts in the state, and I have no doubt such regulations will be made as will put it out of the power of officers to distress the people with impunity.

Governor *Johnston* observed, that men who were in very high offices could not be come at by the ordinary course of justice, but when called before this high tribunal and convicted, they would be stripped of their dignity, and reduced to the rank of their fellow-citizens, and then the courts of common law might proceed against them.

The committee now rose—Mr. President resumed the chair, and Mr. Battle reported, that the committee had, according to order, had the proposed constitution under their consideration, but not having time to go through the same, had directed him to move the Convention for leave to sit again.

Resolved, That this Convention will to-morrow again resolve itself into a committee of the whole Convention, on the said proposed plan of government.

The Convention then adjourned to ten o'clock to-morrow morning.

F R I D A Y, J U L Y 25, 1788.

The Convention met according to adjournment.

Mr. *Gregory*, from the committee of elections, delivered in a report; which being read, was agreed to as follows:

The committee proceeded to have read the return of the Sheriff of Cumberland county, for the town of Fayetteville in said county, wherein John Ingram was returned to represent said town in the Convention.

It is the opinion of this committee, that the said town possesses not the right of representation in this Convention, and that therefore the said John Ingram hath no right to a seat in the same.

It appearing to this committee, that the votes given for Thomas Devane, sen. Esq. and Thomas Devane, were intended and meant for the same person:

Resolved, therefore, That the said Thomas Devane, sen. Esq. is duly elected to represent the county of New-Hanover in this present Convention, and that he take his seat accordingly.

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The order of the day, for taking into further consideration the proposed Constitution for the future government of the United States, the Convention agreeable thereto, resolved itself into a committee of the whole House. Mr. Battle in the chair.

First article of the third section read.

Mr. Cabarrus wished to be informed of the reason why the Senators were to be elected for so long a time.

Mr. Iredell—Mr. Chairman, I have waited for some time in hopes that a gentleman better qualified than myself, would explain this part. Every objection to every part of this Constitution ought to be answered as fully as possible.

I believe, Sir, it was the general sense of all America, with the exception only of one state, in forming their own state Constitutions, that the legislative body should be divided into two branches, in order that the people might have a double security. It will often happen that in a single body a bare majority will carry exceptionable and pernicious measures. The violent faction of a party may often form such a majority in a single body, and by that means the particular views or interests of a part of the community may be consulted, and those of the rest neglected or injured. Is there a single gentleman in this Convention, who has been a member of the Legislature, who has not found the minority in the most important questions to be often right? Is there a man here, who has been in either House, who has not at sometimes found the most solid advantages from the co-operation or opposition of the other? If a measure be right, which has been approved of by one branch, the other will probably confirm it: If it be wrong, it is fortunate that there is another branch to oppose or amend it. These principles probably formed one reason for the institution of a Senate in the form of government before us. Another arose from the peculiar nature of that government, as connected with the governments of the particular states.

The general government will have the protection and management of the general interests of the United States. The local and particular interests of the different states are left to their respective Legislatures. All affairs which concern this state only are to be determined by our Representatives coming from all parts of the state: All affairs which concern the union at large, are to be determined by Representatives.

representatives coming from all parts of the union. Thus then the general government is to be taken care of, and the state governments to be preserved. The former is done by a numerous representation of the people of each state, in proportion to its importance: The latter is effected by giving each state an equal representation in the Senate. The people will be represented in one House: The state Legislatures in the other.

Many are of opinion that the power of the Senate is too great, but I cannot think so, considering the great weight which the House of Representatives will have. Several reasons may be assigned for this. The House of Representatives will be more numerous than the Senate: They will represent the immediate interests of the people: They will originate all money bills, which is one of the greatest securities in any republican government. The respectability of their constituents, who are the free citizens of America, will add great weight to the Representatives. For a power derived from the people is the source of all real honour, and a demonstration of confidence which a man of any feeling would be more ambitious to possess, than any other honour or any emolument whatever. There is therefore always a danger of such a House becoming too powerful, and it is necessary to counteract its influence by giving great weight and authority to the other. I am warranted by well known facts, in my opinion, that the Representatives of the people at large will have more weight, than we should be induced to believe from a slight consideration. The British government furnishes a very remarkable instance to my present purpose. In that country, Sir, is a King, who is hereditary; a man, who is not chosen for his abilities, but who, though he may be without principle or abilities, is by birth their Sovereign, and may impart the vices of his character to the government. His influence and power are so great, that the people would bear a great deal before they would attempt to resist his authority. He is one complete branch of the Legislature, may make as many Peers as he pleases, who are immediately members of another branch; he has the disposal of almost all offices in the kingdom, commands the army and navy, is head of the church, and has means of corrupting a large proportion of the Representatives of the people, who form the third branch of the

Legislature.

Legislature. The House of Peers, which forms the second branch, is composed of Members who are hereditary, and except as to money bills (which they are not allowed either to originate or alter) hath equal authority with the other House. The Members of the House of Commons, who are considered to represent the people, are elected for seven years, and they are chosen by a small proportion of the people, and I believe I may say, a large majority of them by actual corruption. Under these circumstances, one would suppose their influence, compared to that of the King and Lords, was very inconsiderable. But the fact is, that they have by degrees increased their power to an astonishing degree, and when they think proper to exert it can command almost any thing they please. This great power they enjoy, by having the name of Representatives of the people, and the exclusive right of originating money bills. What authority then will our Representatives not possess, who will really represent the people, and equally have the right of originating money bills?

The manner in which our Senate is to be chosen, gives us an additional security. Our Senators will not be chosen by a King, nor tainted by his influence. They are to be chosen by the different Legislatures in the union. Each is to choose two. It is to be supposed that in the exercise of this power the utmost prudence and circumspection will be observed. We may presume that they will select two of the most respectable men in the state, two men who had given the strongest proofs of attachment to the interests of their country. The Senators are not to hold estates for life in the Legislature, nor to transmit them to their children. Their families, friends and estates, will be pledges for their fidelity to their country. Holding no office under the United States, they will be under no temptation of that kind to forget the interests of their constituents. There is every probability that men elected in this manner, will in general do their duty faithfully. It may be expected therefore, that they will co-operate in every laudable act, but strenuously resist those of a contrary nature. To do this to effect, their station must have some permanency annexed to it.

As the Representatives of the people may probably be more popular, and it may be sometimes necessary for the Senate to prevent factious measures taking place, which
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may be highly injurious to the real interest of the public, the Senate should not be at the mercy of every popular clamour. Men engaged in arduous affairs, are often obliged to do things which may for the present be disapproved of, for want of full information of the case, which it is not in every man's power immediately to obtain. In the mean time every one is eager to judge, and many to condemn; and thus many an action is for a time unpopular, the true policy and justice of which afterwards very plainly appears. These observations apply even to acts of legislation concerning domestic policy: They apply much more forcibly to the case of foreign negotiations, which will form one part of the business of the Senate. I hope we shall not be involved in the labyrinths of foreign politicks. But it is necessary for us to watch the conduct of European powers, that we may be on our defence, and ready in case of an attack. All these things will require a continued attention: And in order to know whether they were transacted rightly or not, it must take up a considerable time.

A certain permanency in office is in my opinion useful for another reason. Nothing is more unfortunate for a nation, than to have its affairs conducted in an irregular manner. Consistency and stability are necessary to render the laws of any society convenient for the people. If they were to be entirely conducted by men liable to be called away soon, we might be deprived in a great measure of their utility: Their measures might be abandoned before they were fully executed, and others of a less beneficial tendency substituted in their stead. The public also would be deprived of that experience which adds so much weight to the greatest abilities.

The business of a Senator will require a great deal of knowledge, and more extensive information than can be acquired in a short time. This can be made evident by facts well known. I doubt not the gentlemen of this House who have been Members of Congress, will acknowledge that they have known several instances of men who were Members of Congress, and were there many months before they knew how to act, for want of information of the real state of the union. The acquisition of full information of this kind, must employ a great deal of time; since a general knowledge of the affairs of all the states, and of the re-

lative situation of foreign nations, would be indispensable. Responsibility also would be lessened by a short duration; for many useful measures require a good deal of time, and continued operations, and no man should be answerable for the ill success of a scheme which was taken out of his hands by others.

For these reasons I hope it will appear, that six years are not too long a duration for the Senate: I hope also it will be thought, that so far from being injurious to the liberties and interest of the public, it will form an additional security to both, especially when the next clause is taken up, by which we shall see that one third of the Senate is to go out every second year, and two-thirds must concur in the most important cases; so that if there be only one honest man among the two-thirds that remain, added to the one-third which has recently come in, this will be sufficient to prevent the rights of the people being sacrificed to any unjust ambition of that body.

I was in hopes some other gentleman would have explained this paragraph, because it introduces an entire change in our system, and every change ought to be founded on good reasons, and those reasons made plain to the people. Had my abilities been greater I should have answered the objection better: I have however done it in the best manner in my power, and I hope the reasons I have assigned will be satisfactory to the committee.

Mr. *Maclaine*—Mr. Chairman, A gentleman yesterday made some objections to the power of the Vice-President, and insisted that he was possessed of legislative powers. That in case of equality of voice in the Senate, he had the deciding vote, and that of course he, and not the Senate, legislated. I confess I was struck with astonishment at such an objection, especially as it came from a gentleman of character. As far as my understanding goes, the Vice-President is to have no acting part in the Senate, but a mere casting vote. In every other instance he is merely to preside in the Senate in order to regulate their deliberations. I think there is no danger to be apprehended from him in particular, as he is to be chosen in the same manner with the President, and therefore may be presumed to possess a great share of the confidence of all the states. He has been called an useless officer: I think him very useful, and I think
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the objection very trifling. It shews the uniform opposition gentlemen are determined to make. It is very easy to cavil at the finest government that ever existed.

Mr. *Davie*—Mr. Chairman, I will state to the committee the reasons upon which this officer was introduced. I had the honour to observe to the committee before, the causes of the particular formation of the Senate; that it was owing with other reasons, to the *jealousy* of the states, and particularly to the extreme jealousy of the lesser states, of the power and influence of the larger members of the confederacy. It was in the Senate that the several political interests of the states were to be preserved, and where all their powers were to be perfectly balanced. The commercial jealousy between the eastern and southern states had a principal share in this business. It might happen in important cases, that the voices would be equally divided. Indecision might be dangerous or inconvenient to the public. It would then be necessary to have some person who should determine the question as impartially as possible. Had the Vice-President been taken from the representation of any of the states, the vote of that state would have been diminished in the first instance, and he would have been under local influence in the second: It is true he must be chosen from some state; but from the nature of his election and office, he represents no one state in particular, but all the states. It is impossible that any officer could be chosen more impartially: He is in consequence of his election, the creature of no particular district or state, but the officer and representative of the union. He must possess the confidence of the states in a very great degree, and consequently be the most proper person to decide in cases of this kind. These I believe are the principles upon which the Convention formed this officer.

Sixth clause of the third section read.

Mr. *James Galloway* wished gentlemen to offer their objections. That they must have made objections to it, and that they ought to mention them here.

Mr. *John Blount* said, that the sole power of impeachment had been objected to yesterday, and that it was urged, officers were to be carried from the furthest parts of the states to the seat of government: He wished to know if gentlemen were satisfied.

Mr. *Maclaine*—Mr. Chairman, I have no inclination to get up a second time, but some gentlemen think this subject ought to be taken notice of. I recollect it was mentioned by one gentleman, that petty officers might be impeached. It appears to me, Sir, to be the most horrid ignorance to suppose, that every officer, however trifling his office, is to be impeached for every petty offence; and that every man who should be injured by such petty officers, could get no redress but by this mode of impeachment, at the seat of government, at the distance of several hundred miles, whether he would be obliged to summon a great number of witnesses. I hope every gentleman in this committee must see plainly, that impeachments cannot extend to inferior officers of the United States. Such a construction cannot be supported without a departure from the usual and well-known practice both in England and America. But this clause empowers the House of Representatives, which is the grand inquest of the union at large, to bring great offenders to justice. It will be a kind of state trial for high crimes and misdemeanors. I remember it was objected yesterday, that the House of Representatives had the sole power of impeachment: The word “sole,” was supposed to be so extensive as to include impeachable offences against particular states. Now for my part, I can see no impropriety in the expression. The word relates to the general objects of the union. It can only refer to offences against the United States, nor can it be tortured so as to have any other meaning, without a perversion of the usual meaning of language. The House of Representatives is to have the sole power of impeachment, and the Senate the sole power of trying. And here is a valuable provision, not to be found in other governments. In England, the Lords, who try impeachments, declare solemnly upon honour, whether the persons impeached be guilty or not. But here the Senators are on oath. This is a very happy security. It is further provided, that when the President is tried (for he is also liable to be impeached) the Chief-Justice shall preside in the Senate: Because it might be supposed, that the Vice-President might be connected, together with the President, in the same crime, and would therefore be an improper person to judge him. It would be improper for another reason. On the removal of the President from of-

fice, it devolves on the Vice-President. This being the
 case, if the Vice-President should be Judge, might he not
 look at the office of President, and endeavour to influence
 the Senate unjustly against him. This is a most excellent
 caution. It has been objected by some, that the President
 is in no danger from a trial by the Senate, because he does
 nothing without its concurrence. It is true, he is expressly
 restricted not to make treaties without the concurrence
 of two-thirds of the Senators present, nor appoint officers
 without the concurrence of the Senate (not requiring two-
 thirds). The concurrence of all the Senators however,
 is not required in either of those cases. They may be all
 present when he is impeached, and other Senators in the
 mean time introduced. The Chief-Justice we ought to
 presume, would not countenance a collusion. One dissent-
 ing person might divulge their misbehaviour. Besides he
 is impeachable for his own misdemeanors, and as to
 their concurrence with him, it might be effected by misre-
 presentations of his own, in which case they would be in-
 nocent, though he guilty. I think therefore the Senate a
 very proper body to try him. Notwithstanding the mode
 pointed out for impeaching and trying, there is not a single
 officer but may be tried and indicted at common law. For
 it is provided, that a judgment in cases of impeachment,
 shall not extend further than to removal from office, and
 disqualification to hold and enjoy any office of honour, trust
 or profit under the United States; but the party convicted
 shall nevertheless be liable and subject to indictment, trial,
 judgment, and punishment, according to law. Thus you
 find that no offender can escape the danger of punishment.
 Officers however cannot be oppressed by an unjust decision
 of a bare majority. For it farther provides, that no per-
 son shall be convicted without the concurrence of two-
 thirds of the members present. So that those gentlemen
 who formed this government, have been particularly care-
 ful to distribute every part of it as equally as possible. As
 the government is solely instituted for the United States,
 so the power of impeachment only extends to officers of
 the United States. The gentleman who is so much afraid
 of impeachment by the federal Legislature, is totally mis-
 taken in his principles.

- Mr. J. Taylor—Mr. Chairman, My apprehension is, that
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this clause is connected with the other which gives the sole power of impeachment, and is very dangerous. When I was offering an objection to this part, I observed that it was supposed by some, that no impeachments could be preferred but by the House of Representatives. I concluded that perhaps the collectors of the United States, or gatherers of taxes, might impose on individuals in this country, and that these individuals might think it too great a distance to go to the seat of federal government to get redress, and would therefore be injured with impunity. I observed that there were some gentlemen whose abilities are great, who construe it in a different manner. They ought to be kind enough to carry their construction not to the mere letter, but to the meaning. I observe that when these great men are met in Congress, in consequence of this power, they will have the power of appointing all the officers of the United States. My experience in life shews me, that the friends of the Members of the Legislature will get the offices. These Senators and Members of the House of Representatives, will appoint their friends to all offices. These officers will be great men, and they will have numerous deputies under them. The Receiver-General of the taxes of North-Carolina, must be one of the greatest men in the country. Will he come to me for my taxes? No. He will send his deputy, who will have special instructions to oppress me. How am I to be redressed? I shall be told that I must go to Congress to get him impeached. This being the case, who am I to impeach? A friend of the Representatives of North-Carolina. For unhappily for us, these men will have too much weight for us; they will have friends in the government who will be inclined against us, and thus we may be oppressed with impunity. I was sorry yesterday to hear personal observations drop from a gentleman in this House. If we are not of equal ability with the gentleman, he ought to possess charity towards us, and not lavish such severe reflections upon us in such a declamatory manner. These are considerations I offer to the House. These oppressions may be committed by these officers. I can see no mode of redress. If there be any, let it be pointed out. As to personal aspersions with respect to me, I despise them. Let him convince me by reasoning, but not fall on detraction or declamation.

Mr.

Mr. *MacLaine*—Mr. Chairman, If I made use of any asperity to that gentleman yesterday, I confess I am sorry for it. It was because such an observation came from a gentleman of his profession. Had it come from any other gentleman in this Convention who is not of his profession, I should not be surprised. But I was surprised that it should come from a gentleman of the law, who must know the contrary perfectly well. If his memory had failed him, he might have known by consulting his library. His books would have told him, that no petty officer was ever impeachable. When such trivial, ill-founded objections were advanced, by persons who ought to know better, was it not sufficient to irritate those who were determined to decide the question by a regular and candid discussion? Whether or not there will be a Receiver-General in North-Carolina, if we adopt the Constitution, I cannot take upon myself to say. I cannot say how Congress will collect their money. It will depend upon laws hereafter to be made. These laws will extend to other states as well as us. Should there be a Receiver-General in North-Carolina, he certainly will not be authorised to oppress the people. His deputies can have no power that he could not have himself. As all collectors and other officers will be bound to act according to law, and will in all probability be obliged to give security for their conduct, we may expect they will not dare to oppress. The gentleman has thought proper to lay it down as a principle, that these same Receivers-General will give special orders to their deputies to oppress the people. The President is the superior officer, who is to see the laws put in execution. He is amenable for any mal-administration in his office. Were it possible to suppose, that the President should give wrong instructions to his deputies, whereby the citizens would be distressed, they would have redress in the ordinary courts of common law. But says he, parties injured must go to the seat of government of the United States, and get redress there. I do not think it will be necessary to go to the seat of the general government for that purpose. No persons will be obliged to attend there, but on extraordinary occasions; for Congress will form regulations so as to render it unnecessary for the inhabitants to go thither, but on such occasions. My reasons for this conclusion are these, I look upon it as the interest of all the

the people of America, except those in the vicinity of the seat of government, to make laws as easy as possible for the people, with respect to local attendance. They will not agree to drag their citizens unnecessarily six or seven hundred miles from their homes. This would be equally inconvenient to all except those in the vicinity of the seat of government, and therefore will be prevented. But says the gentleman from Granville, what redress have we when we go to that place? These great officers will be the friends of the Representatives of North-Carolina. It is possible they may or they may not. They have the power to appoint officers for each state from what place they please. It is probable they will appoint them out of the state in which they are to act. I will however admit, for the sake of argument, that those federal officers who will be guilty of misdemeanors in this state, will be near relations of the Representatives and Senators of North-Carolina. What then? Are they to be tried by them only? Will they be the near friends of the Senators and Representatives of the other states? If not, his objection goes for nothing. I do not understand what he says about detraction and declamation. My character is well known. I am no declaimer, but when I see a gentleman ever so respectable, betraying his trust to the public, I will publish it loudly; and I say this is not detraction or declamation.

Governor *Johnston*—Mr. Chairman, Impeachment is very different in its nature from what the learned gentleman from Granville supposes it to be. If an officer commits an offence against an individual, he is amenable to the courts of law. If he commits crimes against the state, he may be indicted and punished. Impeachment only extends to high crimes and misdemeanors in a *public office*. It is a mode of trial pointed out for great misdemeanors against the public. But I think neither that gentleman or any other person need be afraid that officers who commit oppressions, will pass with impunity. It is not to be apprehended, that such officers will be tried by their cousins and friends. Such cannot be on the jury at the trial of the cause; it being a principle of law, that no person interested in a cause, or who is a relation of the party, can be a juror in it. This is the light in which it strikes me. Therefore the objection of the gentleman from Granville, must necessarily fall to the ground on that principle. Mr.

Mr. *Maclaine*—Mr. Chairman, I must obviate some objections which have been made. It was said by way of argument, that they could impeach and remove any officer, whether of the United States, or any particular state. This was suggested by the gentleman from New-Hanover. Nothing appears to me more unnatural than such a construction. The Constitution says in one place, that the House of Representatives shall have the sole power of impeachment. In the clauses under debate it provides, that the Senate shall have the sole power to try all impeachments, and then subjoins, that judgment in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit under the United States. And in the fourth section of the second article, it says, that the President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. Now, Sir, what can be more clear and obvious than this? The several clauses relate to the same subject, and ought to be considered together. If considered separately and unconnectedly, the meaning is still clear. They relate to the government of the union altogether. Judgment on impeachment only extends to removal from office, and future disqualification to hold offices *under the United States*. Can those be removed from offices, and disqualified to hold offices under the United States, who actually held no office under the United States? The fourth section of the second article provides expressly for the removal of the President, Vice-President and all civil officers of the United States, on impeachment and conviction. Does not this clearly prove, that none but officers of the United States are impeachable. Had any other been impeachable, why was not provision made for the case of their conviction? Why not point out the punishment in one case as well as in others? I beg leave to observe, that this is a Constitution which is not made with any reference to the government of any particular state, or to officers of particular states, but to the government of the United States at large. We must suppose, that every officer here spoken of, must be an officer of the United States. The words discover the meaning as plainly as possible. The sentence
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which provides, that " judgment in cases of impeachment, shall not extend further than to removal from office," is joined by a conjunction copulative to the other sentence, " and disqualification to hold and enjoy any office of honour, trust or profit *under the United States*," which incontrovertibly proves, that officers of the United States are only referred to. No other grammatical construction can be put upon it. But there is no necessity to refer to grammatical constructions, since the whole plainly refers to the government of the United States at large. The general government cannot intermeddle with the internal affairs of the state governments. They are in no danger from it. It has been urged, that it has a tendency to a consolidation. On the contrary it appears, that the state Legislatures must exist in full force, otherwise the general government cannot exist itself. A consolidated government would never secure the happiness of the people of this country. It would be the interest of the people of the United States, to keep the general and individual governments as separate and distinct as possible.

Mr. *Bloodworth*—Mr. Chairman, I confess I am obliged to the honourable gentleman for his construction. Were he to go to Congress he might put that construction on the Constitution. But no one can say what construction Congress will put upon it. I do not distrust him, but I distrust them. I wish to leave no dangerous latitude of construction.

The first clause of the fourth section read.

Mr. *Spencer*—Mr. Chairman, It appears to me that this clause, giving this controul over the time, place and manner of holding elections, to Congress, does away the right of the people to choose the Representatives every second year, and impairs the right of the state Legislatures to choose the Senators. I wish this matter to be explained.

Governor *Johnston*—Mr. Chairman, I confess that I am a very great admirer of the new Constitution, but I cannot comprehend the reason of this part. The reason urged is, that every government ought to have the power of continuing itself, and that if the general government had not this power, the state Legislatures might neglect to regulate elections, whereby the government might be discontinued. As long as the state Legislatures have it in their power not to choose the

the Senators, this power in Congress appears to me altogether useless; because they can put an end to the general government by refusing to choose Senators. But I do not consider this such a blemish in the Constitution, as that it ought for that reason, to be rejected. I observe that every state which has adopted the Constitution and recommended amendments, has given directions to remove this objection, and I hope if this state adopts it, she will do the same.

Mr. *Spencer*—Mr. Chairman, It is with great reluctance that I rise upon this important occasion. I have considered with some attention the subject before us. I have paid attention to the Constitution itself, and to the writings on both sides. I considered it on one side as well as on the other, in order to know whether it would be best to adopt it or not. I would not wish to insinuate any reflections on those gentlemen who formed it. I look upon it as a great performance. It has a great deal of merit in it, and it is perhaps as much as any set of men could have done. Even if it be true what gentlemen have observed, that the gentlemen who were Delegates to the federal Convention, were not instructed to form a new Constitution, but to amend the Confederation. This will be immaterial, if it be proper to be adopted. It will be of equal benefit to us, if proper to be adopted in the whole, or in such parts as will be necessary, whether they were expressly delegated for that purpose or not. This appears to me to be a reprehensible clause; because it seems to strike at the state Legislatures, and seems to take away that power of elections, which reason dictates they ought to have among themselves. It apparently looks forward to a consolidation of the government of the United States, when the state Legislatures may entirely decay away. This is one of the grounds which have induced me to make objections to the new form of government. It appears to me that the state governments are not sufficiently secured, and that they may be swallowed up by the great mass of powers given to Congress. If that be the case, such power should not be given; for from all the notions which we have concerning our happiness and well-being, the state governments are the basis of our happiness, security and prosperity. A large extent of country ought to be divided into such a number of states, as that the people may conveniently carry on their own government. This will render

the government perfectly agreeable to the genius and wishes of the people. If the United States were to consist of ten times as many states, they might all have a degree of harmony. Nothing would be wanting but some cement for their connection. On the contrary, if all the United States were to be swallowed up by the great mass of powers given to Congress, the parts that are more distant in this great empire would be governed with less and less energy. It would not suit the genius of the people to assist in the government. Nothing would support government in such a case as that but military coercion. Armies would be necessary in different parts of the United States. The expence which they would cost, and the burdens which they would make necessary to be laid upon the people, would be ruinous. I know of no way that is likely to produce the happiness of the people, but to preserve, as far as possible, the existence of the several states, so that they shall not be swallowed up. It has been said, that the existence of the state governments is essential to that of the general government, because they choose the Senators. By this clause it is evident, that it is in the power of Congress to make any alterations, except as to the place of choosing Senators. They may alter the time from six to twenty years, or to any time; for they have an unlimited controul over the time of elections. They have also an absolute controul over the election of the Representatives. It deprives the people of the very mode of choosing them. It seems nearly to throw the whole power of election into the hands of Congress. It strikes at the mode, time and place of choosing Representatives. It puts all but the place of electing Senators, into the hands of Congress. This supercedes the necessity of continuing the state Legislatures. This is such an article as I can give no sanction to, because it strikes at the foundation of the government on which depends the happiness of the states, and the general government. It is with reluctance I make the objection. I have the highest veneration for the characters of the framers of this Constitution. I mean to make objections only which are necessary to be made. I would not take up time unnecessarily. As to this matter, it strikes at the foundation of every thing. I may say more

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when we come to that part which points out the mode of doing without the agency of the state Legislatures.

Mr. Iredell—Mr. Chairman, I am glad to see so much candour and moderation. The liberal sentiments expressed by the honourable gentleman who spoke last, command my respect. No time can be better employed than in endeavouring to remove, by fair and just reasoning, every objection which can be made to this Constitution. I apprehend, that the honourable gentleman is mistaken as to the extent of the operation of this clause. He supposes, that the controul of the general government over elections looks forward to a consolidation of the states; and that the general word, *time*, may extend to twenty, or any number of years. In my humble opinion, this clause does by no means warrant such a construction. We ought to compare other parts with it. Does not the Constitution say, that Representatives shall be chosen every second year? The right of choosing them, therefore, reverts to the people every second year. No instrument of writing ought to be construed absurdly, when a rational construction can be put upon it. If Congress can prolong the election to any time they please, why is it said, that Representatives shall be chosen every second year? *They must be chosen every second year*; but whether in the month of March or January, or any other month, may be ascertained at a future time, by regulations of Congress. The word *time*, refers only to the particular month and day within the two years. I heartily agree with the gentleman, that if any thing in this Constitution tended to the annihilation of the state governments, instead of exciting the admiration of any man, it ought to excite his resentment and execration. No such wicked intention ought to be suffered. But the gentlemen who formed the Constitution had no such object; nor do I think there is the least ground for that jealousy. The very existence of the general government depends on that of the state governments. The state Legislatures are to choose the Senators. Without a Senate there can be no Congress. The state Legislatures are also to direct the manner of choosing the President. Unless, therefore, there are state Legislatures to direct that manner, no President can be chosen. The same observation may be made as to the House of Representatives, since,

as they are to be chosen by the electors of the most numerous branch of each state Legislature. If there are no state Legislatures, there are no persons to choose the House of Representatives. Thus it is evident, that the very existence of the general government depends on that of the state Legislatures, and of course, that their continuance cannot be endangered by it.

An occasion may arise when the exercise of this ultimate power in Congress may be necessary : As for instance, if a state should be involved in war, and its Legislature could not assemble, as was the case of South-Carolina, and occasionally of some other states, during the late war. It might also be useful for this reason—lest a few powerful states should combine, and make regulations concerning elections, which might deprive many of the electors of a fair exercise of their rights, and thus injure the community, and occasion great dissatisfaction : And it seems natural and proper that every government should have in itself the means of its own preservation. A few of the great states might combine to prevent any election of Representatives at all, and thus a majority might be wanting to do business ; but it would not be so easy to destroy the government by the non-election of Senators, because one-third only are to go out at a time, and all the states will be equally represented in the Senate. It is not probable this power would be abused ; for if it should be, the state Legislatures would immediately resent it ; and their authority over the people will always be extremely great. These reasons induce me to think, that the power is both necessary and useful. But I am sensible great jealousy has been entertained concerning it : And as, perhaps, the danger of a combination, in the manner I have mentioned, to destroy or distress the general government, is not very probable, it may be better to incur this risk, than occasion any discontent, by suffering the clause to continue as it now stands. I should, therefore, not object to the recommendation of an amendment similar to that of other states, that this power in Congress should only be exercised when a state Legislature neglected, or was disabled from making the regulations required.

Mr. *Spencer*—Mr. Chairman, I did not mean to insinuate, that designs were made by the honorable gentlemen who

who composed the federal Constitution, against our liberties. I only meant to say, that the words in this place were exceeding vague. It may admit of the gentleman's construction ; but it may admit of a contrary construction. In a matter of so great moment, words ought not to be so vague and indeterminate. I have said, that the states are the basis on which the government of the United States ought to rest, and which must render us secure. No man wishes more for a federal government than I do. I think it necessary for our happiness : But at the same time, when we form a government which must entail happiness or misery on posterity, nothing is of more consequence than settling it so as to exclude animosity and a contest between the general and individual governments. With respect to the mode here mentioned, they are words of very great extent. This clause provides, that a Congress may at any time alter such regulations, except as to the places of choosing Senators. These words are so vague and uncertain, that it must ultimately destroy the whole liberty of the United States. It strikes at the very existence of the states, and supercedes the necessity of having them at all. I would therefore wish to have it amended in such a manner, as that the Congress should not interfere but when the states refused or neglected to regulate elections.

Mr. *Bloodworth*—Mr. Chairman, I trust that such learned arguments as are offered to reconcile to our minds such dangerous powers will not have the intended weight. The House of Representatives is the only democratical branch. This clause may destroy representation entirely. What does it say ? The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the Legislature thereof ; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators. Now, Sir, does not this clause give an unlimited and unbounded power to Congress over the times, places and manner of choosing Representatives ? They may make the time of election so long, the place so inconvenient, and the manner so oppressive, that it will entirely destroy representation. I hope gentlemen will exercise their own understanding on this occasion, and not let their judgment be led away by these shining characters, for whom, however,

ever, I have the highest respect. This Constitution, if adopted in its present mode, must end in the subversion of our liberties. Suppose it takes place in North-Carolina, can farmers elect then? No, Sir. The elections may be in such a manner that men may be appointed who are not Representatives of the people. This may exist, and it ought to be guarded against. As to the place, suppose Congress should order the elections to be held in the most inconvenient place, in the most inconvenient district; could every person entitled to vote attend at such a place? Suppose they should order it to be laid off into so many districts, and order the election to be held within each district; yet may not their power over the manner of election enable them to exclude from voting every description of men they please? The democratic branch is so much endangered, that no arguments can be made use of to satisfy my mind to it. The honourable gentleman has amused us with learned discussions, and told us he will condescend to propose amendments. I hope the Representatives of North-Carolina will never swallow the Constitution till it is amended.

Mr. Goudy—Mr. Chairman, The invasion of the states is urged as a reason for this clause. But why did they not mention that it should be only in cases of invasion? But that was not the reason in my humble opinion. I fear it was a combination against our liberties. I ask, when we give them the purse in one hand, and the sword in another, what power have we left? It will lead to an aristocratical government, and establish tyranny over us. We are free-men, and we ought to have the privileges of such.

Governor Johnston—Mr. Chairman, I do not impute any impure intentions to the gentlemen who formed this Constitution. I think it unwarrantable in any one to do it. I believe, that were there twenty Conventions appointed, and as many Constitutions formed, we never could get men more able and disinterested than those who formed this, nor a Constitution less exceptionable than that which is now before you. I am not apprehensive that this article will be attended with all the fatal consequences, which the gentleman conceives. I conceive that Congress can have no other power than the states had. The states, with regard to elections, must be governed by the articles of the Constitution;

Constitution ; so must Congress. But, I believe, the power, as it now stands, is unnecessary. I should be perfectly satisfied with it in the mode recommended by the worthy Member on my right hand : Although I should be extremely cautious to adopt any Constitution that would endanger the rights and privileges of the people. I have no fear in adopting this Constitution, and then proposing amendments. I feel as much attachment to the rights and privileges of my country as any man in it ; and if I thought any thing in this Constitution tended to abridge these rights, I would not agree to it. I cannot conceive that this is the case. I have not the least doubt but it will be adopted by a very great majority of the states : For states who have been as jealous of their liberties as any in the world, have adopted it ; and they are some of the most powerful states. We shall have the assent of all the states in getting amendments. Some gentlemen have apprehensions, that Congress will immediately conspire to destroy the liberties of their country. The men, of whom Congress will consist, are to be chosen from among ourselves. They will be in the same situation with us. They are to be bone of our bone, and flesh of our flesh. They cannot injure us without injuring themselves. I have no doubt but we shall choose the best men in the community. Should different men be appointed, they are sufficiently responsible. I therefore think, that no danger is to be apprehended.

Mr. *M'Dowall*—Mr. Chairman, I have the highest esteem for the gentleman who spoke last. He has amused us with the fine characters of those who formed that government. Some were good ; but some were very imperious, aristocratical, despotic and monarchical. If parts of it are extremely good, other parts are very bad. The freedom of election is one of the greatest securities we have for our liberty and privileges. It was supposed by the Member from Edenton, that the controul over elections was only given to Congress to be used in case of invasion. I differ from him. That could not have been their intention, otherwise they could have expressed it. But, Sir, it points forward to the time when there will be no state Legislatures—to the consolidation of all the states. The states will be kept up as boards of elections. I think the same men could make a better Constitution ; for good government is

not the work of a short time. They only had their own wisdom. Were they to go now, they would have the wisdom of the United States. Every gentleman who must reflect on this, must see it. The adoption of several other states is urged. I hope every gentleman stands for himself—will act according to his own judgment—and will pay no respect to the adoption by the other states. It may embarrass us in some political difficulties; but let us attend to the interest of our constituents.

Mr. Iredell answered, that he stated the case of invasion as only one reason out of many, for giving the ultimate controul over elections to Congress.

Mr. Davie—Mr. Chairman, A consolidation of the states, is said by some gentlemen to have been intended. They insinuate that this was the cause of their giving this power over elections. If there were any seeds in this Constitution which might one day produce a consolidation, it would, Sir, with me, be an insuperable objection; I am so perfectly convinced that so extensive a country as this, can never be managed by one consolidated government. The federal Convention were as well convinced as the Members of this House, that the state governments were absolutely necessary to the existence of the federal government: They considered them as the great *massy pillars* on which this political fabric was to be extended and supported, and were fully persuaded, that when they were removed or should moulder down by time, the general government must tumble into ruins. A very little reflection will shew, that no department of it can exist without the state governments.

Let us begin with the House of Representatives. Who are to vote for the federal Representatives? Those who vote for the state Representatives. If the state government vanishes, the general government must vanish also. This is the foundation on which this government was raised, and without which it cannot possibly exist.

The next department is the Senate. How is it formed? By the states themselves. Do they not choose them? Are they not created by them? And will they not have the interest of the states particularly at heart? The states, Sir, can put a final period to the government, as was observed by a gentleman who thought this power over elections unnecessary. If the state Legislatures think proper, they may
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refuse to choose Senators, and the government must be destroyed. Is not this government a nerveless mass, a dead carcass, without the Executive power? Let your Representatives be the most vicious demons that ever existed, let them plot against the liberties of America, let them conspire against its happiness—all their machinations will not avail if not put in execution. By whom are their laws and projects to be executed? By the President. How is he created? By Electors appointed by the people under the direction of the Legislatures—by an union of the interest of the people and the state governments. The state governments can put a *veto*, at any time, on the general government, by ceasing to continue the Executive power. Admitting the Representatives or Senators could make corrupt laws; they can neither execute them themselves, nor appoint the Executive. Now, Sir, I think it must be clear to every candid mind, that no part of this government can be continued after the state governments lose their existence, or even their present forms. It may also be easily proved, that all federal governments possess an inherent weakness which continually tends to their destruction. It is to be lamented that all governments of a federal nature have been short-lived. Such was the fate of the Achæan league, the Amphictyonic council, and other ancient confederacies; and this opinion is confirmed by the uniform testimony of all history. There are instances in Europe of confederacies subsisting a considerable time, but their duration must be attributed to circumstances exterior to their government. The Germanic confederacy would not exist a moment, were it not for the fear of the surrounding powers, and the interest of the Emperor. The history of this confederacy is but a series of factions, dissensions, bloodshed and civil war. The confederacies of the Swiss and United Netherlands, would long ago have been destroyed from their imbecility, had it not been for the fear, and even the policy, of the bordering nations. It is impossible to construct such a government in such a manner as to give it any probable longevity. But, Sir, there is an excellent principle in this proposed plan of federal government, which none of these confederacies had, and to the want of which in a great measure their imperfections may be justly attributed. I mean the principle of representation. I hope that by the

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agency of this principle, if it be not immortal, it will at least be long-lived. I thought it necessary to say this much to detect the futility of that unwarrantable suggestion, that we are to be swallowed up by a great consolidated government. Every part of this federal government is dependent on the continuation of the state Legislatures for its existence. The whole, Sir, can never swallow up its parts. The gentleman from Edenton [Mr. Iredell] has pointed out the reasons of giving this controul over elections to Congress, the principal of which was, to prevent a dissolution of the government by designing states. If all the states were equally possessed of absolute power over their elections, without any controul of Congress, danger might be justly apprehended where one state possesses as much territory as four or five others, and some of them being thinly peopled now, will daily become more numerous and formidable. Without this controul in Congress, those large states might successfully combine to destroy the general government. It was therefore necessary to controul any combination of this kind. Another principal reason was, that it would operate in favour of the people against the ambitious designs of the federal Senate. I will illustrate this by matter of fact. The history of the little state of Rhode-Island is well known. An abandoned faction have seized on the reins of government, and frequently refused to have any representation in Congress. If Congress had the power of making the law of elections operate throughout the United States, no state could withdraw itself from the national councils, without the consent of a majority of the Members of Congress. Had this been the case, that trifling state would not have withheld its representation. What once happened may happen again, and it was necessary to give Congress this power to keep the government in full operation. This being a federal government, and involving the interests of several states; and some acts requiring the assent of more than a majority, they ought to be able to keep their representation full. It would have been a solecism, to have a government without *any means* of self-preservation. The Confederation is the only instance of a government without such means, and is a nerveless system, as inadequate to every purpose of government as it is to the security of the liberties of the people.

ple of America. When the councils of America have this power over elections, they can, in spite of any faction in any particular state, give the people a representation. Uniformity in matters of election is also of the greatest consequence. They ought all to be judged by the same law and the same principles, and not be different in one state from what they are in another. At present the manner of electing is different in different states. Some elect by ballot and others *viva voce*. It will be more convenient to have the manner uniform in all the states. I shall now answer some observations made by the gentleman from Mecklinburg. He has stated, that this power over elections, gave to Congress power to lengthen the time for which they were elected. Let us read this clause coolly, all prejudice aside, and determine whether this construction be warrantable. The clause runs thus: "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the place of choosing Senators." I take it as a fundamental principle, which is beyond the reach of the general or individual governments to alter, that the Representatives shall be chosen every second year, and that the tenure of their offices shall be for two years—that Senators shall be chosen every sixth year, and that the tenure of their offices shall be for six years. I take it also as a principle, that the electors of the most numerous branch of the state Legislatures, are to elect the federal Representatives. Congress has ultimately no power over elections, but what is primarily given to the state Legislatures. If Congress have the power of prolonging the time, &c. as gentlemen observe, the same powers must be completely vested in the state Legislatures. I call upon every gentleman candidly to declare, whether the state Legislatures have the power of altering the time of elections for Representatives from two to four years, or Senators from six to twelve; and whether they have the power to require any other qualifications than those of the most numerous branch of the state Legislatures, and also whether they have any other power over the manner of elections any more than the mere mode of the act of choosing, or whether they shall be held by Sheriffs as contradistinguished to any other officer,

ficer, or whether they shall be by votes as contradistinguished from ballots or any other way. If gentlemen will pay attention they will find, that in the latter part of this clause, Congress has no power but what was given to the states in the first part of the same clause. They may alter the manner of holding the election, but cannot alter the tenure of their office. They cannot alter the nature of the elections, for it is established as fundamental principles, that the electors of the most numerous branch of the state Legislature shall elect the federal Representatives, and that the tenure of their office shall be for two years; and likewise, that the Senators shall be elected by the Legislatures, and that the tenure of their office shall be for six years. When gentlemen view the clause accurately, and see that Congress have only the same power which was in the state Legislature, they will not be alarmed. The learned Doctor on my right [Mr. Spencer] has also said, that Congress might lengthen the time of elections. I am willing to appeal to grammatical construction and punctuation. Let me read this as it stands on paper. [*Here he reads the clause different ways, expressing the same sense.*] Here in the first part of the clause, this power over elections is given to the states, and in the latter part the same power is given to Congress, and extending only to the time of *holding*, the place of *holding*, and the manner of *holding* the elections. Is this not the plain, literal and grammatical construction of the clause? Is it possible to put any other construction on it, without departing from the natural order, and without deviating from the general meaning of the words and every rule of grammatical construction? Twist it, torture it as you may, Sir, it is impossible to fix a different sense upon it. The worthy gentleman from New-Hanover, whose ardour for the liberty of his country I wish never to be damped, has insinuated, that high characters might influence the Members on this occasion. I declare for my own part, I wish every man to be guided by their own conscience and understanding, and by nothing else. Every man has not been bred a politician nor studied the science of government; yet when a subject is explained, if the mind is unwarped by prejudice and not in the leading-strings of other people, gentlemen will do what is right. Were this the case I would risk my salvation on a right decision.

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Mr. *Caldwell*—Mr. Chairman, Those things which can be, may be. We know that in the British government, the Members of Parliament were eligible only for three years. They determined they might be chosen for seven years. If Congress can alter the time, manner and place, I think it will enable them to do what the British Parliament once did. They have declared, that the elections of Senators are for six years, and of Representatives for two years. But they have said there was an exception to this general declaration, *viz.* that Congress can alter them. If the Convention only meant that they should alter them in such a manner as to prevent a discontinuation of the government, why have they not said so? It must appear to every gentleman in this Convention, that they can alter the elections to what time they please: And if the British Parliament did once give themselves the power of sitting four years longer than they had a right to do, Congress, having a standing army, and the command of the militia, may, with the same propriety, make an act to continue the Members for twenty years, or even for their natural lives. This construction appears perfectly rational to me. I shall therefore think that this Convention will never swallow such a government, without securing us against danger.

Mr. *Maclaine*—Mr. Chairman, The reverend gentleman from Guilford, has made an objection which astonishes me more than any thing I have heard. He seems to be acquainted with the history of England, but he ought to consider whether his historical references apply to this country. He tells us of triennial elections being changed to septennial elections. This is a historical fact we well know, and the occasion on which it happened, is equally well known. They talk as loudly of constitutional rights and privileges in England, as we do here, but they have no written constitution. They have a common law, which has been altered from year to year, for a very long period—Magna Charta, and Bill of Rights. These they look upon as their constitution. Yet this is such a constitution as it is universally considered Parliament can change. Blackstone, in his admirable Commentaries, tells us, that the power of the Parliament is transcendent and absolute, and can do and undo every thing that is not naturally impossible. The act, therefore, to which the reverend gentleman alludes,

alludes, was not unconstitutional. Has any man said that the Legislature can deviate from this Constitution? The Legislature is to be guided by the Constitution. They cannot travel beyond its bounds. The reverend gentleman says, that though the Representatives are to be elected for two years, they may pass an act prolonging their appointment for twenty years, or for natural life, without any violation of the Constitution. Is it possible for any common understanding or sense, to put this construction upon it? Such an act, Sir, would be a palpable violation of the Constitution. Were they to attempt it, Sir, the country would rise against them. After such an unwarrantable suggestion as this, any objection may be made to this Constitution. It is necessary to give power to the government. I would ask that gentleman who is so afraid it will destroy our liberties, why he is not as much afraid of our state Legislature? For they have much more power than we are now proposing to give this general government. They have an unlimited controul over the purse and sword—yet no complaints are made. Why is he not afraid that our Legislature will call out the militia to destroy our liberties? Will the militia be called out by the general government to enslave the people—to enslave their friends, their families, themselves? The idea of the militia being made use of as an instrument to destroy our liberties, is almost too absurd to merit a refutation. It cannot be supposed that the Representatives of our general government will be worse men than the Members of our state government. Will we be such fools as to send our greatest rascals to the general government? We must be both fools as well as villains to do so.

Governor *Johnston*—Mr. Chairman, I shall offer some observations on what the gentleman said. A parallel has been drawn between the British Parliament and Congress. The powers of Congress are all circumscribed, defined, and clearly laid down. So far they may go, but no farther. But, Sir, what are the powers of the British Parliament? They have no written Constitution in Britain. They have certain fundamental principles and legislative acts, securing the liberty of the people: But these may be altered by their Representatives, without violating their Constitution, in such manner as they may think proper. Their Legislature

lature existed long before the science of government was well understood. From very early periods you find their Parliament in full force. What is their Magna Charta ? It is only an act of Parliament. Their Parliament can at any time, alter the whole, or any part of it. In short, it is no more binding on the people than any other act which has passed. The power of the Parliament is, therefore, unbounded. But, Sir, can Congress alter the Constitution ? They have no such power. They are bound to act by the Constitution. They dare not recede from it. At the moment that the time for which they are elected expires, they may be removed. If they make bad laws, they *will* be removed, for they will be no longer worthy of confidence. The British Parliament can do every thing they please. Their Bill of Rights is only an act of Parliament, which may be at any time altered or modified, without a violation of the Constitution. The people of Great-Britain have no Constitution to controul their Legislature.—The King, Lords and Commons can do what they please.

Mr. *Caldwell* observed, that whatever nominal powers the British Parliament might possess, yet they had infringed the liberty of the people in the most flagrant manner, by giving themselves power to continue four years in Parliament longer than they had been elected for—That though they were only chosen for three years by their constituents, yet they passed an act, that Representatives should, for the future, be chosen for seven years—That this Constitution would have a dangerous tendency—That this clause would enable them to prolong their continuance in office as long as they pleased—And that if a Constitution was not agreeable to the people, its operation could not be happy.

Governor *Johnson* replied, that the act to which allusion was made by the gentleman, was not unconstitutional : But that if Congress were to pass an act, prolonging the terms of elections of Senators or Representatives, it would be clearly unconstitutional.

Mr. *Maclaine* observed, that the act of Parliament referred to was passed on urgent necessity, when George I. ascended the throne, to prevent the Papists from getting into Parliament ; for parties ran so high at that time, that Papists enough might have got in to destroy the act of settlement,

element, which excluded the Roman Catholics from the succession to the throne.

Mr. *Spencer*—The gentleman from Halifax said, that the reason of this clause was, that some states might be refractory. I profess, that, in my opinion, the circumstances of Rhode-Island do not appear to apply. I cannot conceive the particular cause why Rhode-Island should not send Representatives to Congress. If they were united in one government, is it presumed that they would waive the right of representation? I have not the least reason to doubt they would make use of the privilege. With respect to the construction that the worthy Member put upon the clause, were that construction established, I would be satisfied; but it is susceptible of a different explanation. They may alter the mode of election so as to deprive the people of the right of choosing. I wish to have it expressed in a more explicit manner.

Mr. *Davie*—Mr. Chairman, The gentleman has certainly misconceived the matter, when he says, “that the circumstances of Rhode-Island do not apply.” It is a fact well known, of which perhaps he may not be possessed, that the state of Rhode-Island has not been regularly represented for several years, owing to the character and particular views of the prevailing party. By the influence of this faction, who are in possession of the state government, the people have been frequently deprived of the benefit of a representation in the union, and Congress often embarrassed by their absence. The same evil may again result from the same cause; and Congress ought therefore to possess constitutional power to give the people an opportunity of electing Representatives, if the states neglect or refuse to do it. The gentleman from Anson has said, “that this clause is susceptible of an explanation different from the construction I put upon it.” I have a high respect for his opinion; but that alone, on this important occasion, is not satisfactory: We must have some *reasons* from him to support and sanction this opinion. He is a professional man, and has held an office many years—the nature and duties of which would enable him to put a different construction on this clause, if it is capable of it.

This clause, Sir, has been the occasion of much groundless alarm, and has been the favourite theme of declamation

tion out of doors. I now call upon the gentlemen of the opposition to shew that it contains the mischiefs with which they have alarmed and agitated the public mind, and I defy them to support the construction they have put upon it by one single plausible reason. The gentleman from New-Hanover has said in objection to this clause, "That Congress may appoint the most inconvenient place in the most inconvenient district, and make the manner of election so oppressive, as entirely to destroy representation." If this is considered as possible, he should also reflect that the state Legislatures may do the same thing. But this can never happen, Sir, until the whole mass of the people become corrupt, when all parchment securities will be of little service. Does that gentleman, or any other gentleman who has the smallest acquaintance with human nature or the spirit of America, suppose that the people will passively relinquish privileges, or suffer the usurpation of powers unwarranted by the Constitution? Does not the right of electing Representatives revert to the people every second year? There is nothing in this clause that can impede or destroy this reversion; and although the particular time of year, the particular place in a county or a district, or the particular mode in which elections are to be held, as whether by vote or ballot, be left to Congress to direct; yet this can never deprive the people of the *right* or *privilege* of election. He has also added, that the "democratical branch was in danger from this clause;" and with some other gentlemen took it for granted, that an aristocracy must arise out of the general government. This, I take it, from the very nature of the thing, can never happen. Aristocracies grow out of the combination of a few powerful families, where the country or people upon which they are to operate are immediately under their influence; whereas the interest and influence of this government are too weak, and too much diffused ever to bring about such an event. The confidence of the people, acquired by a wise and virtuous conduct, is the only influence the members of the federal government can ever have. When aristocracies are formed, they will arise within the individual states; it is therefore absolutely necessary that Congress should have a constitutional power to give the people at large a representation in the government, in order to break and controul such dangerous

gerous combinations. Let gentlemen shew when and how this aristocracy they talk of, is to arise out of this Constitution. Are the first members to perpetuate themselves? Is the Constitution to be attacked by such absurd assertions as these, and charged with defects with which it has no possible connection?

Mr. *Bloodworth*—Mr. Chairman, The gentleman has mistaken me. When we examine the gentleman's arguments, they have no weight. He tells us, that it is not probable "that an aristocracy can arise." I did not say that it would. Various arguments are brought forward in support of this article. They are vague and trifling. There is nothing that can be offered to my mind, which will reconcile me to it, while this evil exists—while Congress have this controul over elections. It was easy for them to mention, that this controul should be only exerted when the state would neglect or refuse, or be unable in case of invasion, to regulate elections—If so, why did they not mention it expressly?

It appears to me, that some of their general observations imply a contradiction. Do they not tell us, that there is no danger of a consolidation? That Congress can exist no longer than the states—the massy pillars on which it is said to be raised? Do they not also tell us, that the state governments are to secure us against Congress? At another time they tell us, that it was necessary to secure our liberty by giving them power to prevent the state governments from oppressing us. We know that there is a corruption in human nature. Without circumspection and carefulness we shall throw away our liberties. Why is this general expression used on this great occasion? Why not use expressions that were clear and unequivocal? If I trust my property with a man I take security, shall I then barter away my rights?

Mr. *Spencer*—Mr. Chairman, This clause may operate in such a manner as will abridge the liberty of the people. It is well known that men in power are apt to abuse it, and extend it if possible. From the ambiguity of this expression, they may put such construction on it as may suit them. I would not have it in such a manner as to endanger the rights of the people. But it has been said, that this power is necessary to preserve their existence. There is not the least

doubt but the people will keep them from loosing their existence, if they shall behave in such a manner as will merit it.

Mr. *Maclaine*—Mr. Chairman, I thought it very extraordinary, that the gentleman who was last on the floor, should say that Congress could do what they please with respect to elections, and be warranted by this clause. The gentleman from Halifax [Mr. Davie] has put that construction upon it which *reason* and *common sense* will put upon it. Lawyers will often differ on a point of law, but people will seldom differ about so very plain a thing as this. The clause enables Congress to alter such regulations as the states shall have made with respect to elections. What would he infer from this? What is it to alter? It is to alter the time, place and manner established by the Legislatures, if they do not answer the purpose. Congress ought to have power to perpetuate the government, and not the states, who might be otherwise inclined. I will ask the gentleman, and I wish he may give me a satisfactory answer, if the whole is not in the power of the people, as well when the elections are regulated by Congress, as when by the states? Are not both the agents of the people amenable to them? Is there any thing in this Constitution which gives them the power to perpetuate the sitting Members? Is there any such strange absurdity? If the Legislature of this state has the power to fix the time, place and manner of holding elections, why not place the same confidence in the general government? The members of the general government, and those of the state Legislature, are both chosen by the people. They are both from among the people, and are in the same situation. Those who served in the state Legislature are eligible, and may be sent to Congress. If the elections be regulated in the best manner in the state government, can it be supposed that the same man will lose all his virtue, his character and principles, when he goes into the general government, in order to deprive us of our liberty?

The gentleman from New-Hanover seems to think it possible, Congress will so far forget themselves, as to point out such improper seasons of the year, and such inconvenient places for elections, as to defeat the privilege of the democratic branch altogether. He speaks of inconsistency

in the arguments of the gentlemen, I wish he would be consistent himself. If I do not mistake the politicks of that gentleman, it is his opinion that Congress had sufficient power under the Confederation. He has said without contradiction, that we should be better without the union than with it: That it would be better for us to be by ourselves than be in the union. His antipathy to a general government, and to the union, is evidently inconsistent with his predilection for a federal democratic branch. We should have no democratic part of government at all, under such a government as he would recommend: There is no such part in the old Confederation. The body of the people had no agency in that system. The Members of the present general government are selected by the state Legislatures, and have the power of the purse and other powers, and are not amenable to the people at large. Although the gentleman may deny my assertions, yet this argument of his, is inconsistent with his other assertions and doctrines. It is impossible for any man in his senses to think that we can exist by ourselves, separated from our sister states. Whatever gentlemen may pretend to say on this point, it must be a matter of serious alarm to every reflecting mind, to be disunited from the other states.

Mr. *Bloodworth* begged leave to wipe of the aspersions of the gentleman. That he could not account for any expression which he might drop among a laughing, jocular people, but that it was well known he was for giving power to Congress to regulate the trade of the United States: That he had said, that Congress had exercised power not given them by the Confederation; and that he was accurate in the assertion: that he was a freeman and was under the controul of no man.

Mr. *Maclaine* replied, that he meant no aspersions: That he only meant to point out a fact: That he had committed mistakes himself in argument, and that he supposed the gentleman not more infallible than other people.

Mr. *J. Taylor* wished to know why the states had controul over the place of electing Senators, but not over that of choosing the Representatives.

Mr. *Spaight* answered, that the reason of that reservation was, to prevent Congress from altering the places for holding the legislative Assemblies in the different states.

Mr.

Mr. *James Galloway*—Mr. Chairman, In the beginning I found great candour in the advocates of this government, but it is not so towards the last. I hope the gentleman from Halifax will not take it amiss, if I mention how he brought the motion forward. They began with dangers. As to Rhode-Island being governed by a faction, what has that to do with the question before us? I ask what has the state governments left for them, if the general government is to be possessed of such extensive powers, without controul or limitation, without any responsibility to the states? He asks, how is it possible for the members to perpetuate themselves? I think I can shew how they can do it. For instance, were they to take the government as it now stands organized. We send five Members to the House of Representatives in the general government. They will go no doubt from or near the sea-ports. In other states also, those near the sea will have more interest, and will go forward to Congress; and they can, without violating the Constitution, make a law continuing themselves, as they have controul over the place, time and manner of elections. This may happen, and where the great principles of liberty are endangered, no general, indeterminate, vague expression ought to be suffered. Shall we pass over this article as it is now? They will be able to perpetuate themselves as well as if it had expressly said so.

Mr. *Steele*—Mr. Chairman, The gentleman has said, that the five Representatives which this state will be entitled to send to the general government, will go from the sea-shore. What reason has he to say they will go from the sea-shore? The time, place and manner of holding the elections are to be prescribed by the Legislatures. Our Legislature is to regulate the first election at any event.—They will regulate it as they think proper. They may, and most probably will, lay the state off into districts. Who are to vote for them? Every man who has a right to vote for a Representative to our Legislature, will ever have a right to vote for a Representative to the general government. Does it not expressly provide, that the electors in each state shall have the qualifications requisite for the most numerous branch of the state Legislature? Can they, without a most manifest violation of the Constitution, alter the qualifications of the electors? The power over the manner

manner of elections, does not include that of saying who shall vote. The Constitution expressly says, that the qualifications which entitle a man to vote for a state Representative, will enable him to vote for a federal Representative. It is, then, clearly and indubitably fixed and determined *who* shall be the electors ; and the power over the manner only enables them to determine *how* these electors shall elect—whether by ballot or by vote, or by any other way. Is it not a maxim of universal jurisprudence, of reason and common sense, that an instrument or deed of writing shall be so construed as to give validity to all parts of it, if it can be done without involving any absurdity ? By construing it in the plain obvious way I have mentioned, all parts will be valid. By the way gentlemen suggest, the most palpable contradiction and absurdity will follow. To say that they shall go from the sea-shore, and be able to perpetuate themselves, is a most extravagant idea. Will the Members of Congress deviate from their duty without any prospect of advantage to themselves ? What interest can they have to make the place of elections inconvenient ? The judicial power of that government is so well constructed as to be a check. There was no check in the old Confederation. Their power was in principle and theory transcendent. If the Congress make laws inconsistent with the Constitution, independent Judges will not uphold them, nor will the people obey them. An universal resistance will ensue. In some countries the arbitrary disposition of rulers may enable them to overturn the liberties of the people ; but in a country like this, where every man is his own master, and where almost every man is a freeholder, and has right of election, the violations of a Constitution will not be passively permitted. Can it be supposed, that in such a country the rights of suffrage will be tamely surrendered ? Is it to be supposed, that 30,000 free persons will send the most abandoned wretch in the district to legislate for them in the general Legislature ? I should rather think they would choose men of the most respectable characters.

Mr. President now resumed the chair, and Mr. *Battle* reported, that the committee had, according to order, again had the said proposed Constitution under their consideration, but not having time to go through the same, had directed him to move the Convention for leave to sit again.

Resolved,

Resolved, That this Convention will again to-morrow resolve itself into a committee of the whole Convention, on the said proposed plan of government.

The Convention then adjourned to ten o'clock to-morrow morning.

S A T U R D A Y, J U L Y 26, 1788.

The Convention met according to adjournment, and then resolved itself into a committee of the whole Convention, to take into farther consideration the said proposed Constitution of government—*Mr. Kennion* in the chair.

The fifth section of the first article read.

Mr. Steele observed, that he had heard objections to the third clause of this section, with respect to the periodical publication of the journals, the entering the yeas and nays on them, and the suppression of such parts as required secrecy. That he had no objection himself, for that he thought the necessity of publishing their transactions was an excellent check, and that every principle of prudence and good policy, pointed out the necessity of not publishing such transactions as related to military arrangements and war. That this provision was exactly similar to that which was in the old Confederation.

Mr. Graham wished to hear an explanation of the words "from time to time," whether it was a short or a long time, or how often they should be obliged to publish their proceedings.

Mr. Davie answered, that they would be probably published after the rising of Congress, every year. That if they sat two or three times, or oftener, in the year, they might be published every time they rose. That there could be no doubt of their publishing them as often as it would be convenient and proper, and that they would conceal nothing but what it would be unsafe to publish. He further observed, that some states had proposed an amendment, that they should be published annually; but he thought it very safe and proper as it stood. That it was the sense of the Convention that they should be published at the end of every session. The gentleman from Salisbury had said, that in this particular it resembled the old Confederation.

Other

Other gentlemen have said that there was no similarity at all. He therefore wished the difference to be stated.

Mr. *Iredell* remarked, that the provision in the clause under consideration, was similar in meaning and substance to that in the Confederation. That in time of war it was absolutely necessary to conceal the operations of government, otherwise no attack on an enemy could be premeditated with success, for the enemy could discover our plans soon enough to defeat them. That it was no less imprudent to divulge our negotiations with foreign powers, and the most salutary schemes might be prevented, by imprudently promulgating all the transactions of the government indiscriminately.

Mr. *J. Galloway* wished to obviate what gentlemen had said with regard to the similarity of the old Confederation to the new system, with respect to the publication of their proceedings. He remarked, that at the desire of one Member from any state the yeas and nays were to be put on the journals and published by the Confederation, whereas by this system the concurrence of one-fifth was necessary.

To this it was answered, that the alteration was made because experience had shewed, when any two Members could require the yeas and nays, they were taken on many trifling occasions: And there was no doubt one-fifth would require them on every occasion of importance.

The sixth section read without any observations.

First clause of the seventh section likewise read without any observations.

Second clause read.

Mr. *Iredell*—Mr. Chairman, This is a novelty in the Constitution, and is a regulation of considerable importance. Permit me to state the reasons for which I imagine this regulation was made. They are such as in my opinion, fully justify it.

One great alteration proposed by the constitution, and which is a capital improvement on the Articles of Confederation is, that the executive, legislative, and judicial powers should be separate and distinct. The best writers, and all the most enlightened part of mankind, agree that it is essential to the preservation of liberty, that such distinction and separation of powers should be made. But this distinction would have very little efficacy, if each
power

power had not means to defend itself against the encroachment of the others.

The British Constitution, the theory of which is much admired, but which, however, is in fact liable to many objections, has divided the government into three branches. The King, who is hereditary, forms one branch, the Lords and Commons the two others; and no bill passes into a law without the King's consent. 'This a great constitutional support of his authority. By the proposed Constitution, the President is of a very different nature from a Monarch. He is to be chosen by Electors appointed by the people—to be taken from among the people—to hold his office only for the short period of four years—and to be personally responsible for any abuse of the great trust reposed in him.

In a republican government it would be extremely dangerous to place it in the power of one man to put an absolute negative on a bill proposed by two houses, one of which represented the people, the other the states of America. It therefore became an object of consideration, how the Executive could defend itself without being a component part of the Legislature. This difficulty was happily remedied by the clause now under our consideration. The Executive is not entirely at the mercy of the Legislature; nor is it put in the power of the Executive entirely to defeat the acts of those two important branches. As it is provided in this clause, if a bare majority of both Houses should pass a bill which the President thought injurious to his country, it is in his power—to do what? Not to say in an arbitrary, haughty manner, that he does not approve of it; but, if he thinks it a bad bill, respectfully to offer his reasons to both Houses; by whom, in that case, it is to be reconsidered, and not to become a law unless two-thirds of both Houses shall concur; which they still may, notwithstanding the President's objection. It cannot be presumed that he would venture to oppose a bill under such circumstances, without very strong reasons. Unless he was sure of a powerful support in the Legislature, his opposition would be of no effect; and as his reasons are to be put on record, his fame is committed both to the present times and to posterity. The exercise of this power in a time of violent factions, might be possibly hazardous

to himself, but he can have no ill motive to exert it in the face of a violent opposition. Regard to his duty alone could induce him to oppose when, it was probable two-thirds would at all events over-rule him. This power may be usefully exercised, even when no ill intention prevails in the Legislature. It might frequently happen, that where a bare majority had carried a pernicious bill, if there was an authority to suspend it, upon a cool statement of reasons many of that majority, on a reconsideration, might be convinced, and vote differently. I therefore think the method proposed, is a happy medium between the possession of an absolute negative, and the Executive having no controul whatever, on acts of legislation: And at the same time that it serves to protect the Executive from ill designs in the Legislature, it may also answer the purpose of preventing many laws passing which would be immediately injurious to the people at large. It is a strong guard against abuses in all, that the President's reasons are to be entered at large on the journals, and if the bill passes notwithstanding, that the yeas and nays are also to be entered. The public therefore can judge fairly between them.

The first clause of the eighth section read.

Mr. *Spencer*—Mr. Chairman, I conceive this power to be too extensive, as it embraces all possible powers of taxation, and gives up to Congress every possible article of taxation that can ever happen. By means of this, there will be no way for the states of receiving or collecting taxes at all, but what may interfere with the collections of Congress. Every power is given over our money, to those over whom we have no immediate controul. I would give them powers to support the government, but would not agree to annihilate the state governments in an article which is most essential to their existence. I would give them power of laying imposts; and I would give them power to lay and collect excises. I confess that this is a kind of tax so odious to a free people, that I would with great reluctance agree to its exercise. But it is obvious, that unless such excises were admitted, the public burthen will be all borne by those parts of the community which do not manufacture for themselves. So manifest an inequality would justify a recurrence to this species of taxes.

How are direct taxes to be laid? By a poll-tax, assessments on land or other property? Inconvenience and oppression will arise from any of them. I would not be understood that I would not wish to have an efficient government for the United States. I am sensible that laws operating on individuals, cannot be carried on against states; because if they do not comply with the general laws of the union, there is no way to compel a compliance but force. There must be an army to compel them. Some states may have some excuse for non-compliance. Others will feign excuses. Several states may perhaps be in the same predicament. If force be used to compel them, they will probably call for foreign aid, and the very means of defence will operate to the dissolution of the system, and to the destruction of the states. I would not therefore deny that Congress ought to have the power of taking out of the pockets of the individuals at large, if the states fail to pay those taxes in convenient time. If requisitions were to be made on the several states, proportionate to their abilities, the several state Legislatures, knowing the circumstances of their constituents, and that they would ultimately be compelled to pay, would lay the tax in a convenient manner, and would be able to pay their quotas at the end of the year. They are better acquainted with the mode in which taxes can be raised, than the general government can possibly be.

It may happen, for instance, that if ready money cannot be immediately received from the pockets of individuals for their taxes, their estates, consisting of lands, negroes, stock, and furniture, must be set up and sold at vendue. We can easily see, from the great scarcity of money at this day, that great distresses must happen. There is no hard money in the country. It must come from some other parts of the world. Such property would sell for one tenth part of its value. Such a mode as this would, in a few years, deprive the people of their estates. But on the contrary, if such articles as are proper for exportation, were either specifically taken for their taxes immediately by the state Legislature, or if the collection should be deferred till they had disposed of such articles, no oppression or inconvenience would happen. There is no person so poor but who can raise something to dispose of. For a great

party

part of the United States, those articles which are proper for exportation would answer the purpose. I would have a tax laid on estates where such articles could not be had, and such a tax to be by installments for two or more years.

I would admit that if the quotas were not punctually paid at the end of the time, that Congress might collect taxes, because this power is absolutely necessary for the support of the general government. But I would not give it in the first instance, for nothing would be more oppressive, as in a short time people would be compelled to part with their property. In the other case they would part with none but in such a manner as to encourage their industry. On the other hand if requisitions, in cases of emergency, were proposed to the state Assemblies, it would be a measure of convenience to the people, and would be a means of keeping up the importance of the state Legislatures, and would conciliate their affections; and their knowledge of the ultimate right of Congress to collect taxes, would stimulate their exertions to raise money. But if the power of taxation be given in the first instance to Congress, the state Legislatures will be liable to be counteracted by the general government, in all their operations. These are my reasons for objecting to this article.

Governor *Johnston*—Mr. Chairman, This clause is objected to, and it is proposed to alter it in such a manner that the general government shall not have power to lay taxes in the first instance, but shall apply to the states, and in case of refusal, that direct taxation shall take place. That is to say, that the general government should pass an act to levy money on the United States, and if the states did not within a limited time pay their respective proportions, the officers of the United States should proceed to levy money on the inhabitants of the different states. This question has been agitated by the Conventions of different states, and some very respectable states have proposed that there should be an amendment in the manner which the worthy Member last up has proposed. But, Sir, although I pay very great respect to the opinions and decisions of the gentlemen who composed those Conventions, and although they were wise in many instances, I cannot concur with them in this particular. It appears to me that it will be attended with many inconveniences. It seems to me probable, that
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the money arising from duties and excises, will be in general sufficient to answer all the ordinary purposes of government; but in cases of emergency it will be necessary to lay direct taxes. In cases of emergency it will be necessary that these taxes should be a responsible and established fund to support the credit of the United States: For it cannot be supposed that from the ordinary sources of revenue, money can be brought into our treasury in such a manner as to answer pressing dangers; nor can it be supposed that our credit will enable us to procure any loans, if our government is limited in the means of procuring money. But if the government have it in their power to lay those taxes, it will give them credit to borrow money on that security, and for that reason it will not be necessary to lay so heavy a tax; for if the tax is sufficiently productive to pay the interest, money may always be had in consequence of that security. If the state Legislatures must be applied to, they must lay a tax sufficient for the full sum wanting. This will be much more oppressive than a tax laid by Congress; for I presume that no state Legislature will have as much credit individually, as the United States conjointly; therefore viewing it in this light, a tax laid by Congress will be much easier than a tax laid by the states. Another inconvenience which will attend this proposed amendment is, that these emergencies may happen a considerable time before the meeting of some state Legislatures, and previous to their meeting the schemes of the government may be defeated by this delay. A considerable time will elapse before the state can lay the tax, and a considerable time before it be collected, and perhaps it cannot be collected at all.— One reason which the worthy Member has offered in favour of the amendment was, that the general Legislature cannot lay a tax without interfering with the taxation of the state Legislature. It may happen, that the taxes of both may be laid on the same article; but I hope and believe that the taxes to be laid on by the general Legislature, will be so very light, that it will be no inconvenience to the people to pay them; and if you attend to the probable amount of the impost, you must conclude that the small addition to the taxes will not make them so high as they are at this time. Another reason offered by the worthy Member in support of the amendment, is, that the state Legislature

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may direct taxes to be paid in specific articles. We had full experience of this in the late war. I call on the House to say, whether it was not the most oppressive, and least productive tax ever known in the state. Many articles were lost, and many could not be disposed of so as to be of any service to the people. Most articles are perishable, and cannot therefore answer. Others are difficult to transport, expensive to keep, and very difficult to dispose of. A tax payable in tobacco would answer very well in some parts of the country, and perhaps would be more productive than any other; yet we see that great losses have been sustained by the public on this article. A tax payable in any kind of grain would answer very little purpose—grain being perishable. A tax payable in pitch and tar would not answer. A mode of this kind would not be at all eligible in this state: The great loss on the specific articles, and inconvenience in disposing of them, would render them productive of very little.

He says, that this would be a means of keeping up the importance of the state Legislatures. I am afraid it would have a different effect. If requisitions should not be complied with at the time fixed, the officers of Congress would then immediately proceed to make their collections. We know that several causes would inevitably produce a failure. The states would not, or could not comply. In that case, the state Legislature would be disgraced. After having done every thing for the support of their credit and importance without success, would they not be degraded in the eyes of the United States? Would it not cause heart-burnings between particular states and the United States? The inhabitants would oppose the tax-gatherers. They would say, "We are taxed by our own state Legislature for the proportionate quota of our state, we will not pay you also." This would produce insurrections and confusion in the country. These are the reasons which induce me to support this clause. It is perhaps particularly favourable to this state. We are not an importing country—very little is here raised by imposts. Other states who have adopted the Constitution import for us. Massachusetts, South-Carolina, Maryland and Virginia, are great importing states. From them we procure foreign goods, and by that means they are generally benefited. For it is agreed upon by all
writers,

writers, that the consumer pays the impost. Do we not then pay a tax in support of their revenue in proportion to our consumption of foreign articles? Do we not know that this, in our present situation, is without any benefit to us? Do we not pay a second duty when these goods are imported into this state? We now pay double duties. It is not to be supposed that the merchant will pay the duty without wishing to get interest and profit on the money he lays out. It is not to be presumed that he will not add to the price a sum sufficient to indemnify himself for the inconvenience of parting with the money he pays as a duty. We therefore now pay a much higher price for European manufactures than the people do in the great importing states. Is it not laying heavy burthens on the people of this country, not only to compel them to pay duties for the support of the importing states, but to pay a second duty on the importation into this state by our own merchants? By adoption we shall participate in the amounts of the imposts.—Upon the whole, I hope this article will meet with the approbation of this committee, when they consider the necessity of supporting the general government, and the many inconveniences, and probable if not certain inefficacy, of requisitions.

Mr. *Spencer*—Mr. Chairman, I cannot, notwithstanding what the gentleman has advanced, agree to this clause unconditionally. The most certain criterion of happiness that any people can have, is, to be taxed by their own immediate Representatives—By those Representatives who intermix with them, and know their circumstances—not by those who cannot know their situation. Our federal Representatives cannot sufficiently know our situation and circumstances. The worthy gentleman said, that it would be necessary for the general government to have the power of laying taxes, in order to have credit to borrow money. But I cannot think, however plausible it may appear, that his argument is conclusive. If such emergency happens as will render it necessary for them to borrow money, it will be necessary for them to borrow before they proceed to lay the tax. I conceive the government will have credit sufficient to borrow money in the one case as well as the other. If requisitions be punctually complied with, no doubt they can borrow, and if not punctually complied with, Congress can ultimately lay the tax.

I wish to have the most easy way for the people to pay their taxes. The state Legislature will know every method and expedient by which the people can pay, and they will recur to the most convenient. This will be agreeable to the people, and will not create insurrections or dissensions in the country. The taxes might be laid on the most productive articles : I wish not, for my part, to lay them on perishable articles. There are a number of other articles besides those which the worthy gentleman enumerated. There are besides tobacco, hemp, indigo, and cotton. In the northern states, where they have manufactures, a contrary system from ours would be necessary. There the principal attention is paid to the giving their children trades. They have few articles for exportation. By raising the tax in this manner, it will introduce such a spirit of industry as cannot fail of producing happy consequences to posterity. He objects to the mode of paying taxes in specific articles : May it not be supposed that we shall gain something by experience, and avoid those schemes and methods which shall be found inconvenient and disadvantageous ? If expences should be incurred in keeping and disposing of such articles, could not those expences be reimbursed by a judicious sale ? Cannot the Legislature be circumspect as to the choice and qualities of the objects to be selected for raising the taxes due to the continental treasury ? The worthy gentleman has mentioned, that if the people should not comply to raise the taxes in this way, that then if they were subject to the law of Congress, it would throw them into confusion. I would ask every one here, if there be not more reason to induce us to believe that they would be thrown into confusion in case the power of Congress was exercised by Congress in the first instance, than in the other case. After having so long a time to raise the taxes, it appears to me that there could be no kind of doubt of a punctual compliance. The right of Congress to lay taxes ultimately, in case of non-compliance with requisitions, would operate as a penalty, and would stimulate the states to discharge their quotas faithfully. Between these two modes there is an immense difference. The one will produce the happiness, ease, and prosperity of the people ; the other will destroy them, and produce insurrection.

Mr. *Spaight*—Mr. Chairman, It was thought absolutely necessary for the support of the general government, to give it power to raise taxes. Government cannot exist without certain and adequate funds: Requisitions cannot be depended upon. For my part, I think it indifferent whether I pay the tax to the officers of the continent, or to those of the state. I would prefer paying to the continental officers, because it will be less expensive.

The gentleman last up, has objected to the propriety of the tax being laid by Congress, because they could not know the circumstances of the people. The state Legislature will have no source or opportunity of information which the Members of the general government may not have. They can avail themselves of the experience of the state Legislatures. The gentleman acknowledges the inefficacy of requisitions, and yet recommends them. He has allowed that laws cannot operate upon political bodies without the agency of force. His expedient of applying to the states in the first instance, will be productive of delay, and will certainly terminate in a disappointment to Congress. But the gentleman has said that we had no hard money, and that the taxes might be paid in specific articles. It is well known that if taxes are not raised in medium, the state loses by it. If the government wishes to raise one thousand pounds, they must calculate on a disappointment by specific articles, and will therefore impose taxes more in proportion to the expected disappointment. An individual can sell his commodities much better than the public at large. A tax payable in *any* produce would be less productive, and more oppressive to the people, as it would enhance the public burthens by its inefficiency. As to abuses by the continental officers, I apprehend the state officers will more probably commit abuses than they. Their conduct will be more narrowly watched, and misconduct more severely punished. They will be therefore more cautious.

Mr. *Spencer*, in answer to Mr. *Spaight*, observed, that in case of war, he was not opposed to this article, because if the states refused to comply with requisitions, there was no way to compel them but military coercion, which would induce refractory states to call for foreign aid, which might terminate in a dismemberment of the empire. But he said that he would not give the power of direct taxation to Congress

Congress in the first instance, as he thought the states would lay the taxes in a less oppressive manner.

Mr. *Whitmill Hill*—Mr. Chairman, The subject now before us is of the highest importance. The object of all government is the protection, security, and happiness of the people. To produce this end, government must be possessed of the necessary means.

Every government must be empowered to raise a sufficient revenue; but I believe it will be allowed on all hands, that Congress has been hitherto altogether destitute of that power so essential to every government. I believe also that it is generally wished that Congress should be possessed of power to raise such sums as are requisite for the support of the union, though gentlemen may differ with regard to the mode of raising them.

Our past experience shews us, that it is in vain to expect any possible efficacy from requisitions. Gentlemen recommend these as if their inutility had not been experienced. But do we not all know what effects they have produced? Is it not to them that we must impute the loss of our credit and respectability? It is necessary, therefore, that government have recourse to some other mode of raising a revenue. Had, indeed, every state complied with requisitions, the old Confederation would not have been complained of; but as the several states have already discovered such a repugnancy to comply with federal engagements, it must appear absolutely necessary to free the general government from such a state of dependence.

The debility of the old system, and the necessity of substituting another in its room, are the causes of calling this Convention.

I conceive, Sir, that the power given by that clause, is absolutely necessary to the existence of the government. Gentlemen say that we are in such a situation that we cannot pay taxes. This, Sir, is not a fair representation in my opinion. The honest people of this country acknowledge themselves sufficiently able and willing to pay them. Were it a private contract they would find means to pay them. The honest part of the community complain of the acts of the Legislature. They complain that the Legislature makes laws, not to suit their constituents, but themselves. The Legislature, Sir, never means to pay a

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just debt, as their constituents wish to do. Witness, the laws made in this country.—I will, however, be bold enough to say, that it is the wish of the honest people, to pay those taxes which are necessary for the support of the government. We have for a long time waited, in hope that our Legislature would point out the manner of supporting the general government, and relieving us from our present ineligible situation. Every body was convinced of the necessity of this, but how is it to be done? The Legislature have pointed out a mode—their old favourite mode—they have made paper money—purchased tobacco at an extravagant price, and sold it at a considerable loss—they have received about a dollar in the pound. Have we any ground to hope that we shall be in a better situation?

Shall we be bettered by the alternative proposed by gentlemen—by levying taxes in specific articles? How will you dispose of them? Where is the merchant to buy them? Your business will be put into the hands of a Commissioner, who, having no business of his own, grasps at it eagerly, and *he* no doubt will *manage* it. But if the payment of the tax be left to the people—if individuals are told that they must pay such a certain proportion of their income to support the general government, then each will consider it as a debt—he will exert his ingenuity and industry to raise it—He will use no agent, but depend upon himself. By these means the money will certainly be collected. I will pledge myself for its certainty. As the Legislature has never heretofore called upon the people, let the general government apply to individuals—It cannot *depend* upon states. If the people have articles, they can receive money for them. Money is said to be scarce—But, Sir, it is the want of industry which is the source of our indigence and difficulties. If people would be but active, and exert every power, they might certainly pay, and be in easy circumstances—And the people are disposed to do so—I mean the good part of the community, which, I trust, is the greater part of it.

Were the money to be paid into our treasury first, instead of remitting it to the continental treasury, we should apply it to discharge our own pressing demands; by which means, a very small proportion of it would be paid to Congress. And if the tax were to be laid and collected by the several
states,

states, what would be the consequence? Congress must depend upon twelve funds for its support. The general government must depend on the contingency of succeeding in twelve different applications to twelve different bodies! What a slender and precarious dependence would this be! The states, when called upon to pay these demands of Congress, would fail: They would pay every other demand before those of Congress. They have hitherto done it. Is not this a true statement of facts? How is it with the continental treasury? The true answer to this question must hurt every friend to his country.

I came in late; but I believe that a gentleman [Governor Johnston] said, that if the states should refuse to pay requisitions, and the continental officers were sent to collect, the states would be degraded, and the people discontented. I believe this would be the case. The states, by acting dishonestly, would appear in the most odious light; and the people would be irritated at such an application, after a rejection by their own Legislature. But if the taxes were to be raised of individuals, I believe they could, without any difficulty, be paid in due time.

But, Sir, the United States wish to be established and known among other nations. This will be a matter of great utility to them. We might then form advantageous connections. When it is once known among foreign nations, that our general government and our finances are upon a respectable footing, should emergencies happen, we can borrow money of them without any disadvantage. The lender would be sure of being reimbursed in time. This matter is of the highest consequence to the United States. Loans must be resorted to sometimes. In case of war they would be necessary. All nations borrow money on pressing occasions.

The gentleman who was last up, mentioned many specific articles which could be paid by the people in discharge of their taxes. He has, I think, been fully answered. He must see the futility of such a mode. When our wants would be greatest, these articles would be least productive—I mean in time of war. But we still have means—such means as honest and assiduous men will find. He says, that Congress cannot lay the tax to suit us. He has forgot that Congress are acquainted with us—go from

us—are situated like ourselves. I will be bold to say, that it will be most their own interest to behave with propriety and moderation. Their own interest will prompt them to lay taxes moderately ; and nothing but the last necessity will urge them to recur to that expedient.

This is a most essential clause. Without money government will answer no purpose. Gentlemen compare this to a foreign tax. It is by no means the case. It is laid by ourselves. Our own Representatives will lay it, and will, no doubt, use the most easy means of raising it possible. Why not trust our own Representatives ? We might no doubt have confidence in them on this occasion, as well as every other. If the continental treasury is to depend on the states as usual, it will be always poor. But gentlemen are jealous, and unwilling to trust government, though they are their own Representatives. Their maxim is, trust them with no power. This holds against all government. Anarchy will ensue, if government be not trusted. I think that I know the sentiments of the honest, industrious part of the community, as well as any gentleman in this house. They wish to discharge these debts, and are able. If they can raise the interest of the public debt, it is sufficient. They will not be called upon for more than the interest, till such time as the country be rich and populous. The principal can then be paid with ease. The interest can now be paid with great facility.

We can borrow money with ease, and on advantageous terms, when it shall be known, that Congress will have that power which all governments ought to have. Congress will not pay their debts in paper money. I am willing to trust this article to Congress, because I have no reason to think that our government will be better than it has been. Perhaps I have spoken too liberally of the Legislature before ; but I do not expect that they will ever, without a radical change of men and measures, wish to put the general government on a better footing. It is not the poor man who opposes the payment of those just debts to which we owe our independence and political existence—but the rich miser. Not the poor, but the rich, shudder at the idea of taxes. I have no dread that Congress will distress us ; nor have I any fear that the tax will be embezzled by officers. Industry and economy will be promoted,

moted, and money will be easier got than ever it has been yet. The taxes will be paid by the people when called upon. I trust, that all honest, industrious people will think with me, that Congress ought to be possessed of the power of applying immediately to the people for its support, without the interposition of the state Legislatures. I have no confidence in the Legislature—The people do not suppose them to be honest men.

Mr. *Steele* was decidedly in favour of the clause. A government without revenue, he compared to a poor, forlorn, dependent individual, and said, that the one would be as helpless and contemptible as the other. He wished the government of the union to be on a respectable footing. Congress, he said, shewed no disposition to tax us: That it was well known, that a poll-tax of eighteen pence per poll, and six pence per hundred acres of land, were appropriated and offered by the Legislature to Congress: That Congress was solicited to send the officers to collect those taxes, but they refused: That if this power was not given to Congress, the people must be oppressed, especially in time of war: That during the last war, provisions, horses, &c. had been taken from the people by force, to supply the wants of government: That a respectable government would not be under the necessity of recurring to such unwarrantable means: That such a method was unequal and oppressive to the last degree. The citizens, whose property was pressed from them, paid all the taxes—the rest escaped. The press-masters went often to the poorest, and not to the richest citizens, and took their horses, &c. This disabled them from making a crop next year. It would be better, he said, to lay the public burthens equally upon the people. Without this power, the other powers of Congress would be nugatory. He added, that it would, in his opinion, give strength and respectability to the United States in time of war—would promote industry and frugality—and would enable the government to protect and extend commerce, and consequently increase the riches and population of the country.

Mr. *Joseph M'Dowall*—Mr. Chairman, This is a power I will never agree to give up from the hands of the people of this country. We know that the amount of the imposts will be trifling, and that the expences of this government

vernment will be very great ; consequently the taxes will be very high. The tax-gatherers will be sent, and our property will be wrested out of our hands. The Senate is most dangerously constructed. Our only security is the House of Representatives. They may be continued at Congress eight or ten years. At such a distance from their homes, and for so long a time, they will have no feeling for, nor any knowledge of, the situation of the people. If elected from the sea-ports, they will not know the western part of the country, and *vice versa*. Two co-operative powers cannot exist together. One must submit. The inferior must give up to the superior. While I am up, I will say something to what has been said by the gentleman to ridicule the General Assembly. He represents the Legislature in a very approbious light. It is very astonishing that the people should choose men of such characters to represent them. If the people be virtuous, why should they put confidence in men of a contrary disposition. As to paper money, it was the result of necessity. We were involved in a great war. What money had been in the country, was sent to other parts of the world. What would have been the consequence if paper money had not been made ? We must have been undone. Our political existence must have been destroyed. The extreme scarcity of specie, with other good causes, particularly the solicitation of the officers to receive it at its nominal value, for their pay, produced subsequent emissions.— He tells us that all the people wish this power to be given---that the mode of payment need only be pointed out, and that they will willingly pay. How are they to raise the money ? Have they it in their chests ? Suppose, for instance, there be a tax of two shilling per hundred laid on land---where is the money to pay it ? We have it not. I am acquainted with the people. I know their situation. They have no money. Requisitions may yet be complied with. Industry and frugality may enable the people to pay moderate taxes, if laid by those who have a knowledge of their situation, and a feeling for them. If the tax-gatherers come upon us, they will, like the locusts of old, destroy us. They will have pretty high salaries, and will exert themselves to oppress us. When we consider these things, we should be cautious. They will be weighed, I trust,

trust, by the House. Nothing said by the gentlemen on the other side, has obviated my objections.

Governor *Johnston*—Mr. Chairman, The gentleman who was last up, still insists on the great utility which would result from that mode which has been hitherto found ineffectual. It is amazing that past experience will not instruct him. When a merchant follows a similar mode—when he purchases dear and sells cheap, he is called a swindler, and must soon become a bankrupt. This state deserves that most disgraceful epithet. We are swindlers—we gave three pounds per hundred weight for tobacco, and sold it at three dollars per hundred weight, after having paid very considerable expences for transporting and keeping it. The United States are bankrupts. They are considered such in every part of the world. They borrow money, and promise to pay—they have it not in their power, and they are obliged to ask of the people to whom they owe, to lend them money to pay the very interest. This is disgraceful and humiliating. By these means we are paying compound interest. No private fortune, however great—no state, however affluent, can stand this most destructive mode. This has proceeded from the inefficacy of requisitions. Shall we continue the same practice? Shall we not rather struggle to get over our misfortunes? I hope we shall.

Another Member on the same side, says, that it is improper to take the power of taxation out of the hands of the people. I deny that it is taken out of their hands by this system. Their immediate Representatives lay these taxes. Taxes are necessary for every government. Can there be any danger when these taxes are laid by the Representatives of the people? If there be, where can political safety be found? But it is said that we have a small proportion of that representation. Our proportion is equal to the proportion of money we shall have to pay. It is therefore a full proportion, and unless we suppose that all the Members of Congress shall combine to ruin their constituents, we have no reason to fear. It is said (I know not from what principle) that our Representatives will be taken from the sea-coast, and will not know in what manner to lay the tax to suit the citizens of the western part of the country. I know not whence that idea arose. The gentlemen

gentlemen from the westward are not precluded from voting for Representatives. They have it therefore in their power to send them from the westward, or the middle parts of the state. They are more numerous, and can send them or the greater part of them. I do not doubt but they will send the most proper, and men in whom they can put confidence, and will give them, from time to time, instructions to enlighten their minds.

Something has been said with regard to paper money. I think very little can be said in favour of it; much may be said, very justly, against it.

Every man of property—every man of considerable transactions—whether a merchant, planter, mechanic, or of any other condition, must have felt the baneful influence of that currency. It gave us relief for a moment. It assisted us in the prosecution of a bloody war. It is destructive however, in general, in the end. It was struck in the last instance, for the purpose of paying the officers and soldiers. The motive was laudable. I then thought, and still do, that those gentlemen might have had more advantage by not receiving that kind of payment. It would have been better for them and for the country, had it not been emitted. We have involved ourselves in a debt of £200,000. We have not, with this sum, honestly and fairly paid £50,000. Was this right? But, say they, there was no circulating medium. This want was necessary to be supplied. It is a doubt with me whether the circulating medium be increased by an emission of paper currency. Before the emission of the paper money, there was a great deal of hard money among us. For thirty years past I had not known so much specie in circulation as we had at the emission of paper money, in 1783. That medium was increasing daily. People from abroad bring specie, for, thank God, our country produces articles which are every where in demand. There is more specie in the country than is generally imagined, but the proprietors keep it locked up. No man will part with his specie. It lies in his chest. It is asked, why not lend it out? The answer is obvious: That should he once let it get out of his power, he never can recover the whole of it. If he bring suit, he will obtain a verdict for one half of it. This is the reason of our poverty. The scarcity of
money

money must be in some degree owing to this, and the specie which is now in this country, might as well be in any other part of the world. If our trade was once on a respectable footing, we should find means of paying that enormous debt.

Another observation was made, which has not yet been answered, viz. that the demands of the United States will be smaller than those of the states, for this reason—the United States will only make a demand of the interest of the public debts; the states must demand both principal and interest: For I presume no state can on an emergency produce, without the aid of individuals, a sum sufficient for that purpose; but the United States can borrow on the credit of their funds, arising from their power of laying taxes, such sums as will be equal to the emergency.

There will be always credit given where there is a good security. No man who is not a miser, will hesitate to trust where there is a respectable security; but credulity itself would not trust where there was no kind of security, but an absolute certainty of losing. Mankind wish to make their money productive; they will therefore lend it where there is a security and certainty of recovering it, and no longer keep it hoarded in strong boxes.

This power is essential to the very existence of the government. Requisitions are fruitless and idle. Every expedient proposed as an alternative, or to qualify this power, is replete with inconvenience. It appears to me therefore, upon the whole, that this article stands much better as it is, than in any other manner.

Mr. Iredell—Mr. Chairman, I do not presume to rise to discuss this clause, after the very able, and, in my opinion, unanswerable arguments which have been urged in favour of it; but merely to correct an error which fell from a very respectable Member [Mr. M'Dowall] on the other side. It was, that Congress, by interfering with the mode of elections, might continue themselves in office. I thought that this was sufficiently explained yesterday. There is nothing in the Constitution to empower Congress to continue themselves longer than the time specified. It says expressly, that the House of Representatives shall consist of Members chosen for two years, and that the Senate shall be composed of Senators chosen for

fix years. At the expiration of these terms, the right of election reverts to the people and the states. Nor is there any thing in the Constitution to warrant a contrary supposition. The clause alluded to, has no reference to the duration of Members in Congress, but merely as to the time and manner of their election.

Now that I am up, Sir, I beg leave to take notice of a suggestion, that Congress could as easily borrow money when they had the ultimate power of laying taxes, as if they possessed it in the first instance. I entirely differ from that opinion. Had Congress the immediate power, there would be no doubt the money would be raised. In the other mode, doubts might be entertained concerning it. For can any man suppose, that if for any reasons, the state Legislatures did not think proper to pay their quotas, and Congress should be compelled to lay taxes, that it would not raise alarms in the state? Is it not reasonable to think that the people would be more apt to side with their state Legislature, who indulged them, than with Congress, who imposed taxes upon them? They would say, "Had we been able to pay, our state Legislature would have raised the money. They know and feel for our distresses, but Congress have no regard for our situation, and have imposed taxes on us we are unable to bear." This is, Sir, what would probably happen. Language like this, would be the high road to popularity: In all countries, and particularly in free ones, there are many ready to catch at such opportunities of making themselves of consequence with the people. General discontent would probably ensue, and a serious quarrel take place between the general and the state governments. Foreigners, who would view our situation narrowly before they lent their money, would certainly be less willing to risk it on such contingencies as these, than if they knew there was a direct fund for their payment, from which no ill consequences could be apprehended. The difference between a people who are able to borrow, and those who are not, is extremely great. Upon a critical emergency, it may be impossible to raise the full sum wanted immediately upon the people: In this case, if the public credit is good, they may borrow a certain sum, and raise for the present only enough to pay the interest, deferring the payment of the principal till the public

lic is more able to bear it. In the other case, where no money can be borrowed, there is no resource if the whole sum cannot be raised immediately. The difference may perhaps be stated as twenty to one. An hundred thousand pounds therefore may be wanted in the one case: Five thousand pounds may be sufficient for the present, in the other. Surely this is a difference of the utmost moment. I should not have risen at all, were it not for the strong impression which might have been made by the error committed by the worthy gentleman on the other side. I hope I shall be excused for the time I have taken up with the additional matter, though it was only stating what had been urged with great propriety before.

Mr. Goudy—Mr. Chairman, This is a dispute whether Congress shall have great enormous powers. I am not able to follow these learned gentlemen through all the labyrinths of their oratory. Some represent us as rich and not honest; and others again represent us as honest and not rich. We have no gold or silver, no substantial money to pay taxes with. This clause, with the clause of elections, will totally destroy our liberties. The subject of our consideration therefore is, whether it be proper to give any man or set of men, an unlimited power over our purse, without any kind of controul. The purse strings are given up by this clause. The sword is also given up by this system. Is there no danger in giving up both? There is no danger we are told. It may be so, but I am jealous and suspicious of the liberties of mankind: And if it be a character which no man wishes but myself, I am willing to take it. Suspensions in small communities, are a pest to mankind; but in a matter of this magnitude, which concerns the interest of millions yet unborn, suspicion is a very noble virtue. Let us see, therefore, how far we give power, for when it is once given, we cannot take it away. It is said that those who formed this Constitution, were great and good men. We do not dispute it. We also admit that great and learned people have adopted it. But I have a judgment of my own, and though not so well informed always as others, yet I will exert it when manifest danger presents itself. When the power of the purse and the sword are given up, we dare not think for ourselves. In case of war, the last man and the last penny would be extorted

extorted from us. That the Constitution has a tendency to destroy the state governments, must be clear to every man of common understanding. Gentlemen, by their learned arguments, endeavour to conceal the danger from us. I have no notion of this method of evading arguments, and of clouding them over with rhetoric, and I must say, sophistry too. But I hope no man will be led astray with them.

Governor *Johnston* observed, that if any sophistical arguments had been made use of, they ought to be pointed out; and no body could doubt that it was in the power of a learned divine [alluding to Mr. Caldwell] to shew their sophistry.

Governor *Johnston* being informed of his mistake in taking Mr. Goudy for Mr. Caldwell, apologized for it.

Mr. *Porter*—Mr. Chairman, I must say that I think the gentleman last up was wrong, for the other gentleman was, in my opinion, right. This is a money clause. I would fain know whence this power originates. I have heard it said that the Legislature were villains, and that this power was to be exercised by the Representatives of the people. When a building is raised, it should be on solid ground—Every gentleman must agree that we should not build a superstructure on a foundation of villains. Gentlemen say that the mass of the people are honest—I hope gentlemen will consider that we should build the structure on the people, and not on the Representatives of the people. Agreeably to the gentleman's argument [Mr. Hill] our Representatives will be mere villains. I expect that very learned arguments, and powerful oratory will be displayed on this occasion. I expect that the great cannon from Halifax [meaning Mr. Davie] will discharge fire balls among us, but large batteries are often taken by small arms.

Mr. *Bloodworth* wished that gentlemen would desist from making personal reflections. He was of opinion that it was wrong to do so, and incompatible with their duty to their constituents. That every man had a right to display his abilities, and he hoped they would no longer reflect upon one another.

From the second to the eight clause read without any observation.

Ninth clause read.

Several Members wished to hear an explanation of this clause. Mr. *Maclaine* looked upon this clause as a very valuable part of the Constitution, because it consulted the ease and convenience of the people at large: For that if the Supreme Court were at one fixed place, and no other tribunals established, nothing could possibly be more injurious. That it was therefore necessary that Congress should have power to constitute tribunals in different states, for the trial of common causes, and to have appeals to the Supreme Court in matters of more magnitude: That that was his idea, but if not satisfactory, he trusted other gentlemen would explain it. That it would be more explained when they came to the Judiciary.

The tenth and eleventh clauses read without any observation.

Twelfth clause read.

Mr. *Iredell*—Mr. Chairman, This clause is of so much importance, that we ought to consider it with the most serious attention. It is a power vested in Congress, which, in my opinion, is absolutely indispensable; yet there have been, perhaps, more objections made to it, than any other power vested in Congress. For my part, I will observe generally, that so far from being displeased with that jealousy and extreme caution with which gentlemen consider every power proposed to be given to this government, they give me the utmost satisfaction. I believe the passion for liberty is stronger in America than in any other country in the world: Here every man is strongly impressed with its importance, and every breast glows for the preservation of it. Every jealousy, not incompatible with the indispensable principles of government, is undoubtedly to be commended: But these principles must, at all events, be observed. The powers of government ought to be competent to the public safety. This, indeed, is the primary object of all governments. It is the duty of gentlemen who form a Constitution, to take care that no power should be wanting which the safety of the community requires. The exigencies of the country must be provided for, not only in respect to common and usual cases, but for occasions which do not frequently occur. If such a provision is not made, critical occasions may arise, when there must be

be either an usurpation of power, or the public safety eminently endangered; for besides the evils attending the frequent change of a Constitution, the case may not admit of so slow a remedy. In considering the powers that ought to be vested in any government, possible abuses ought not to be pointed out, without at the same time considering their use. No power of any kind or degree can be given, but what may be abused: We have therefore only to consider, whether any particular power is absolutely necessary. If it be, the power must be given and we must run the risk of the abuse, considering our risk of this evil, as one of the conditions of the imperfect state of human nature, where there is no good without the mixture of some evil. At the same time it is undoubtedly our duty to guard against abuses as much as possible. In America, we enjoy peculiar blessings: The people are distinguished by the possession of freedom in a very high degree, unmixed with those oppressions the freest countries in Europe suffer. But we ought to consider that in this country as well as others, it is equally necessary to restrain and suppress internal commotions, and to guard against foreign hostility. There is I believe, no government in the world without a power to raise armies. In some countries in Europe, a great force is necessary to be kept up to guard against those numerous armies maintained by many sovereigns there; where an army belonging to one government alone, sometimes amounts to two hundred thousand or four hundred thousand men. Happily we are situated at a great distance from them, and the inconsiderable power to the north of us is not likely soon to be very formidable. But though our situation places us at a remote danger, it cannot be pretended we are in no danger at all. I believe there is no man who has written on this subject, but has admitted that this power of raising armies is necessary in time of war; but they do not choose to admit of it in a time of peace. It is to be hoped that in time of peace, there will not be occasion at any time, but for a very small number of forces; possibly a few garrisons may be necessary to guard the frontiers, and an insurrection like that lately in Massachusetts, might require some troops. But a time of war is the time when the power would probably be exerted to any extent. Let us, however, consider the consequences

of a limitation of this power to a time of war only. One moment's consideration will shew the impolicy of it in the most glaring manner. We certainly ought to guard against the machinations of other countries. We know not what designs may be entertained against us; but surely when known, we ought to endeavour to counteract their effects; such designs may be entertained in a time of profound peace as well as after a declaration of war. Now suppose, for instance, our government had received certain intelligence that the British government had formed a scheme to attack New-York next April, with ten thousand men; would it not be proper immediately to prepare against it? and by so doing the scheme might be defeated. But if Congress had no such power, because it was a time of peace, the place must fall the instant it was attacked, and it might take years to recover what might at first have been seasonably defended. This restriction, therefore, cannot take place with safety to the community, and the power must of course be left to the direction of the general government. I hope there will be little necessity for the exercise of this power; and I trust that the universal resentment and resistance of the people will meet every attempt to abuse this or any other power. That high spirit for which they are distinguished, I hope will ever exist, and it probably will as long as we have a republican form of government. Every man feels a consciousness of personal equality and independence: Let him look at any part of the continent, he can see no superiors. This personal independence is the surest safe-guard of the public freedom. But is it probable that our own Representatives, chosen for a limited time, can be capable of destroying themselves, their families, and fortunes, even if they have no regard to their public duty? When such considerations are involved, surely it is very unlikely that they will attempt to raise an army against the liberties of their country. Were we to establish an hereditary nobility, or a set of men who were to have exclusive privileges, then indeed our jealousy might be well grounded. But fortunately we have no such. The restriction contended for, of no standing army in time of peace, forms a part of our own state Constitution. What has been the consequence? In December, 1786, the Assembly flagrantly violated it, by raising

raising two hundred and one men for two years, for the defence of Davidson county. I do not deny that the intention might have been good, and that the Assembly really thought the situation of that part of the country required such a defence. But this makes the argument still stronger against the impolicy of such a restriction, since our own experience points out the danger resulting from it: For I take it for granted, that we could not at that time be said to be in a state of war. Dreadful might the condition of this country be, without this power. We must trust our friends or trust our enemies. There is one restriction on this power, which I believe is the only one that ought to be put upon it. Though Congress are to have the power of raising and supporting armies, yet they cannot appropriate money for that purpose for a longer time than two years. Now we will suppose that the majority of the two Houses should be capable of making a bad use of this power, and should appropriate more money to raise an army than is necessary. The appropriation we have seen cannot be constitutional for more than two years: Within that time it might command obedience. But at the end of the second year from the first choice, the whole House of Representatives must be re-chosen, and also one-third of the Senate. The people being inflamed with the abuse of power of the old Members, would turn them out with indignation. Upon their return home they would meet the universal execrations of their fellow-citizens—Instead of the grateful plaudits of their county, so dear to every feeling mind, they would be treated with the utmost resentment and contempt:—Their names would be held in everlasting infamy; and their measures would be instantly reprobated and changed by the new Members. In two years, a system of tyranny certainly could not succeed in the face of the whole people; and the appropriation could not be with any safety for less than that period. If it depended on an annual vote, the consequence might be, that at a critical period, when military operations were necessary, the troops would not know whether they were entitled to pay or not, and could not safely act till they knew that the annual vote had passed. To refuse this power to the government, would be to invite insults and attacks from other nations. Let us not, for God's sake, be guilty of such in-

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discretion as to trust to our enemies mercy, but give, as is our duty, a sufficient power to government to protect their country, guarding at the same time against abuses as well as we can. We well know what this country suffered by the ravages of the British army during the war. How could we have been saved but by an army? Without that resource we should soon have felt the miserable consequences; and this day, instead of having the honour, the greatest any people ever enjoyed, to choose a government which our reason recommends, we should have been groaning under the most intolerable tyranny that was ever felt. We ought not to think these dangers are entirely over. The British government is not friendly to us: They dread the rising glory of America: They tremble for the West-Indies, and their colonies to the north of us: They have counteracted us on every occasion since the peace. Instead of a liberal and reciprocal commerce, they have attempted to confine us to a most narrow and ignominious one. Their pride is still irritated with the disappointment of their endeavours to enslave us. They know that on the record of history their conduct towards us must appear in the most disgraceful light. Let it also appear on the record of history, that America was equally wise and fortunate in peace as well as in war. Let it be said, that with a temper and unanimity unexampled, they corrected the vices of an imperfect government, and framed a new one on the basis of justice and liberty: That though all did not concur in approving the particular structure of this government, yet that the minority peaceably and respectfully submitted to the decision of the greater number. This is a spectacle so great, that if it should succeed, this must be considered the greatest country under Heaven; for there is no instance of any such deliberate change of government in any other nation that ever existed. But how would it gratify the pride of our enemy to say: "We could not conquer you, but you have ruined yourselves. You have foolishly quarrelled about trifles. You are unfit for any government whatever. You have separated from us, when you were unable to govern yourselves, and you now deservedly feel all the horrors of anarchy." I beg pardon for saying so much. I did not intend it when I began. But the consideration of one of the most im-

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portant parts of the plan excited all my feelings on the subject. I speak without any affectation in expressing my apprehension of foreign dangers—the belief of them is strongly impressed on my mind. I hope therefore the gentlemen of the committee will excuse the warmth with which I have spoken. I shall now take leave of the subject. I flatter myself that gentlemen will see that this power is absolutely necessary, and must be vested somewhere ; that it can be vested no where so well as in the general government, and that it is guarded by the only restriction which the nature of the thing will admit of.

Mr. *Hardiman* desired to know, if the people were attacked or harrassed in any part of the state, if on the frontiers for instance, whether they must not apply to the state Legislature for assistance ?

Mr. *Iredell* replied, that he admitted that application might be immediately made to the state Legislature, but that by the plan under consideration, the strength of the union was to be exerted to repel invasions of foreign enemies and suppress domestic insurrections ; and that the possibility of an instantaneous and unexpected attack in time of profound peace, illustrated the danger of restricting the power of raising and supporting armies.

The rest of the eighth section read without any observation. First clause of the ninth section read.

Mr. *J. M'Dowall* wished to hear the reasons of this restriction.

Mr. *Spaight* answered, that there was a contest between the northern and southern states : That the southern states, whose principal support depended on the labour of slaves, would not consent to the desire of the northern states to exclude the importation of slaves absolutely : That South-Carolina and Georgia insisted on this clause as they were now in want of hands to cultivate their lands : That in the course of twenty years they would be fully supplied : That the trade would be abolished then, and that in the mean time some tax or duty might be laid on.

Mr. *M'Dowall* replied, that the explanation was just such as he expected, and by no means satisfactory to him, and that he looked upon it as a very objectionable part of the system.

Mr. *Iredell*—Mr. Chairman, I rise to express sentiments similar

similar to those of the gentleman from Craven. For my part, were it practicable to put an end to the importation of slaves immediately, it would give me the greatest pleasure, for it certainly is a trade utterly inconsistent with the rights of humanity, and under which great cruelties have been exercised. When the entire abolition of slavery takes place, it will be an event which must be pleasing to every generous mind, and every friend of human nature; but we often wish for things which are not attainable. It was the wish of a great majority of the Convention to put an end to the trade immediately, but the states of South-Carolina and Georgia would not agree to it. Consider then what would be the difference between our present situation in this respect, if we do not agree to the Constitution, and what it will be if we do agree to it. If we do not agree to it, do we remedy the evil? No, Sir, we do not. For if the Constitution be not adopted, it will be in the power of every state to continue it forever. They may or may not abolish it at their discretion. But if we adopt the Constitution the trade must cease after twenty years if Congress declare so, whether particular states please so or not; surely then we gain by it. This was the utmost that could be obtained. I heartily wish more could have been done. But as it is, this government is nobly distinguished above others by that very provision. Where is there another country in which such a restriction prevails? We therefore, Sir, set an example of humanity, by providing for the abolition of this inhuman traffic, though at a distant period. I hope therefore that this part of the Constitution will not be condemned, because it has not stipulated for what was impracticable to obtain.

Mr. *Spaight* further explained the clause. That the limitation of this trade to the term of twenty years, was a compromise between the eastern states and the southern states. South-Carolina and Georgia wished to extend the term. The eastern states insisted on the entire abolition of the trade. That the state of North-Carolina had not thought proper to pass any law prohibiting the importation of slaves, and therefore its Delegates in the Convention did not think themselves authorized to contend for an immediate prohibition of it.

Mr. *Iredell* added to what he had said before, That the
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states of Georgia and South-Carolina, had lost a great many slaves during the war, and that they wished to supply the loss.

Mr. Galloway—Mr. Chairman, The explanation given to this clause, does not satisfy my mind. I wish to see this abominable trade put an end to. But in case it be thought proper to continue this abominable traffic for twenty years, yet I do not wish to see the tax on the importation extended to all persons whatsoever. Our situation is different from the people to the north. We want citizens. They do not. Instead of laying a tax, we ought to give a bounty, to encourage foreigners to come among us. With respect to the abolition of slavery, it requires the utmost consideration. The property of the southern states consists principally of slaves. If they mean to do away slavery altogether, this property will be destroyed. I apprehend it means to bring forward manumission. If we manumit our slaves, what country shall we send them to? It is impossible for us to be happy, if after manumission they are to stay among us.

Mr. Iredell—Mr. Chairman, The worthy gentleman, I believe, has misunderstood this clause, which runs in the following words, "The migration or importation of such persons as any of the states now existing, shall think proper to admit, shall not be prohibited by the Congress, prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person." Now, Sir, observe that the eastern states, who long ago have abolished slavery, did not approve of the expression *slaves*, they therefore used another that answered the same purpose. The Committee will observe the distinction between the two words migration and importation. The first part of the clause will extend to persons who come into the country as free people or are brought as slaves. But the last part extends to slaves only. The word *migration* refers to free persons; but the word *importation* refers to slaves, because free people cannot be said to be imported. The tax therefore is only to be laid on slaves who are imported, and not on free persons who migrate. I further beg leave to say, that the gentleman is mistaken in another thing. He seems to say that this extends to the abolition of slavery. Is there any thing in this Constitu-

tion which says that Congress shall have it in their power to abolish the slavery of those slaves who are now in the country? Is it not the plain meaning of it, that after twenty years they may prevent the future importation of slaves? It does not extend to those now in the country. There is another circumstance to be observed. There is no authority vested in Congress to restrain the states in the interval of twenty years, from doing what they please. If they wish to inhibit such importation, they may do so. Our next Assembly may put an entire end to the importation of slaves.

The rest of the ninth section read without any observation.

Article second, section first.

Mr. *Davie*—Mr. Chairman, I must express my astonishment at the precipitancy with which we go through this business. Is it not highly improper to pass over in silence any part of this Constitution, which has been loudly objected to? We go into a committee to have a freer discussion. - I am sorry to see gentlemen hurrying us through and suppressing their objections, in order to bring them forward at an unseasonable hour. We are assembled here to deliberate for our own common welfare, and to decide upon a question of infinite importance to our country. What is the cause of this silence and gloomy jealousy in gentlemen of the opposition? This department has been universally objected to by them. The most virulent invectives, the most opprobrious epithets, and the most indecent scurrility, have been used and applied against this part of the Constitution. It has been represented as incompatible with any degree of freedom. Why, therefore, do not gentlemen offer their objections now, that we may examine their force, if they have any? The clause meets my entire approbation. I only rise to shew the principle on which it was formed. The principle is, the separation of the executive from the legislative—a principle which pervades all free governments. A dispute arose in the Convention, concerning the re-eligibility of the President. It was the opinion of the deputation from this state, that he should be elected for five or seven years, and be afterwards ineligible. It was urged, in support of this opinion, that the return of public officers into the common

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mass of the people, where they would feel the tone they had given to the administration of the laws, was the best security the public had for their good behaviour : That it would operate as a limitation to his ambition, at the same time that it rendered him more independent : That when once in possession of that office, he would move Heaven and earth to secure his re-election, and perhaps become the cringing dependent of influential men. That our opinion was supported by some experience of the effects of this principle in several of the states. A large and very respectable majority were of the contrary opinion. It was said, that such an exclusion would be improper for many reasons ; that if an enlightened, upright man, had discharged the duties of the office ably and faithfully, it would be depriving the people of the benefit of his ability and experience, though they highly approved of him. That it would render the President less ardent in his endeavours to acquire the esteem and approbation of his country, if he knew that he would be absolutely excluded after a given period. And that it would be depriving a man of singular merit, even of the rights of citizenship. It was also said, that the day might come, when the confidence of America would be put in one man, and that it might be dangerous to exclude such a man from the service of his country. It was urged likewise, that no undue influence could take place in his election. That as he was to be elected on the same day throughout the United States, no man could say to himself, *I am to be the man*. Under these considerations, a large, respectable majority voted for it as it now stands. With respect to the unity of the Executive, the superior energy and secrecy wherewith one person can act, was one of the principles on which the Convention went : But a more predominant principle was, the more obvious responsibility of one person. It was observed, that if there were a plurality of persons, and a crime should be committed, when their conduct came to be examined, it would be impossible to fix the fact on any one of them : But that the public were never at a loss when there was but one man. For these reasons, a great majority concurred in the unity, and re-elegibility also, of the Executive. I thought proper to shew the spirit of the deputation from this state. However, I

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heartily concur in it as it now stands, as the mode of his election precludes every possibility of corruption or improper influence of any kind.

Mr. *Joseph Taylor* thought it improper to object on every trivial case. That this clause had been argued on in some degree before, and that it would be an useless waste of time to dwell any longer upon it. That if they had the power of amending the Constitution, that every part need not be discussed, as some were not objectionable. And that for his own part, he would object when any essential defect came before the House.

Second, third and fourth clauses read.

Mr. *J. Taylor* objected to the power of Congress to determine the time of choosing the Electors, and to determine the time of electing the President, and urged that it was improper to have the election on the same day throughout the United States. That Congress, not satisfied with their power over the time, place and manner of elections of Representatives, and over the time and manner of elections of Senators, and their power of raising an army, wished likewise to controul the election of the Electors of the President. That by their army, and the election being on the same day in all the states, they might compel the electors to vote as they please.

Mr. *Spaight* answered, that the time of choosing the Electors was to be determined by Congress, for the sake of regularity and uniformity. That if the states were to determine it, one might appoint it at one day, and another at another, &c. and that the election being on the same day in all the states would prevent a combination between the Electors.

Mr. *Iredell*—Mr. Chairman, It gives me great astonishment to hear this objection, because I thought this to be a most excellent clause. Nothing is more necessary than to prevent every danger of influence. Had the time of election been different in different states, the Electors chosen in one state might have gone from state to state and conferred with the other Electors, and the election might have been thus carried on under undue influence. But by this provision, the Electors must meet in the different states on the same day, and cannot confer together. They may not even know who are the Electors in the other states. There can be therefore no kind

kind of combination. It is probable, that the man who is the object of the choice of thirteen different states, the Electors in each voting unconnectedly with the rest, must be a person who possesses in a high degree the confidence and respect of his country.

Governor *Johnston* expressed doubts with respect to the persons by whom the Electors were to be appointed. Some, he said, were of opinion that the people at large were to choose them, and others thought the state Legislatures were to appoint them.

Mr. *Iredell* was of opinion, that it could not be done with propriety by the state Legislatures, because as they were to direct the manner of appointing, a law would look very awkward, which should say "They gave the power of such appointments to themselves."

Mr. *Maclaine* thought the state Legislatures might direct the Electors to be chosen in what manner they thought proper, and they might direct it to be done by the people at large.

Mr. *Davie* was of opinion, that it was left to the wisdom of the Legislatures to direct their election in whatever manner they thought proper.

Mr. *Taylor* still thought the power improper with respect to the time of choosing the Electors. This power appeared to him to belong properly to the state Legislatures, nor could he see any purpose it could answer but that of an augmentation of the Congressional powers, which he said were too great already. That by this power they might prolong the elections to seven years, and that though this would be in direct opposition to another part of the Constitution, sophistry would enable them to reconcile them.

Mr. *Spaight* replied, that he was surprised that the gentleman objected to the power of Congress to determine the time of choosing the Electors, and not to that of fixing the day of the election of the President. That the power in the one case could not possibly answer the purpose of uniformity without having it in the other. That the power in both cases could be exercised properly only by one general superintending power. That if Congress had not this power, there would be no uniformity at all, and that a great deal of time would be taken up in order to agree upon the time.

The committee now rose. Mr. President resumed the chair, and Mr. Kennion reported, that the committee had, according order, again had the said proposed Constitution under their consideration, and had made a further progress therein, but not having time to go through the same, had directed him to move for leave to sit again.

Resolved, That this Convention will on Monday next, again resolve itself into a committee of the whole Convention on the said proposed plan of government.

The Convention then adjourned until Monday next, nine o'clock.

M O N D A Y, J U L Y 28, 1788.

The Convention met according to adjournment, and immediately resolved itself into a committee of the whole Convention, to take into further consideration the proposed Constitution of government for the United States.

The second section of the second article read.

Mr. *Iredell*—Mr. Chairman, This part of the Constitution has been much objected to. The office of superintending the execution of the laws of the union, is an office of the utmost importance. It is of the greatest consequence to the happiness of the people of America, that the person to whom this great trust is delegated should be worthy of it. It would require a man of abilities and experience: It would also require a man who possessed in a high degree the confidence of his country. This being the case, it would be a great defect in forming a Constitution for the United States, if it was so constructed that by any accident an improper person could have a chance to obtain that office. The Committee will recollect, that the President is to be elected by Electors appointed by each state, according to the number of Senators and Representatives to which the state may be entitled in the Congress: That they are to meet on the same day throughout all the states, and vote by ballot for two persons, one of whom shall not be an inhabitant of the same state with themselves. These votes are afterwards to be transmitted under seal to the seat of the general government. The person who has the greatest number of votes, if it be a majority of the whole, will be the President. If more than one have a majority, and equal votes, the House of Representatives are to

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choose one of them. If none have a majority of votes, then the House of Representatives are to choose which of the persons they think proper, out of the five highest on the list. The person having the next greatest number of votes is to be the Vice-President, unless two or more should have equal votes, in which case the Senate is to choose one of them for Vice-President. If I recollect right, these are the principal characteristics. Thus, Sir, two men will be in office at the same time. The President, who possesses in the highest degree the confidence of his country; and the Vice-President, who is thought to be the next person in the union most fit to perform this trust. Here, Sir, every contingency is provided for. No faction or combination can bring about the election. It is probable, that the choice will always fall upon a man of experienced abilities and fidelity. In all human probability, no better mode of election could have been devised.

The rest of the first section read without any observations.

Second section read.

Mr. *Iredell*—Mr. Chairman, I was in hopes that some other gentleman would have spoken to this clause. It conveys very important powers, and ought not to be passed by. I beg leave in as few words as possible to speak my sentiments upon it. I believe most of the Governors of the different states, have powers similar to those of the President. In almost every country the Executive has the command of the military forces. From the nature of the thing, the command of armies ought to be delegated to one person only. The secrecy, dispatch and decision which are necessary in military operations, can only be expected from one person. The President therefore is to command the military forces of the United States, and this power I think a proper one; at the same time it will be found to be sufficiently guarded. A very material difference may be observed between this power, and the authority of the King of Great-Britain under similar circumstances. The King of Great-Britain is not only the Commander in Chief of the land and naval forces, but has power in time of war to raise fleets and armies. He has also authority to declare war. The President has not the power of declaring war by his own authority, nor that of raising fleets and armies. These powers are vested in other hands. The power de-
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declaring war is expressly given to Congress, that is, to the two branches of the Legislature, the Senate composed of Representatives of the state Legislatures, the House of Representatives deputed by the people at large. They have also expressly delegated to them, the powers of raising and supporting armies, and of providing and maintaining a navy.

With regard to the militia, it must be observed, that though he has the command of them when called into the actual service of the United States, yet he has not the power of calling them out. The power of calling them out, is vested in Congress, for the purpose of executing the laws of the union. When the militia are called out for any purpose, some person must command them; and who so proper as that person who has the best evidence of his possessing the general confidence of the people? I trust therefore, that the power of commanding the militia when called forth into the actual service of the United States, will not be objected to.

The next part which says, "That he may require the opinion in writing of the principal officers," is in some degree substituted for a Council. He is only to consult them if he thinks proper. Their opinion is to be given him in writing. By this means he will be aided by their intelligence, and the necessity of their opinions being in writing, will render them more cautious in giving them, and make them responsible should they give advice manifestly improper. This does not diminish the responsibility of the President himself. They might otherwise have colluded, and opinions have been given too much under his influence.

It has been the opinion of many gentlemen, that the President should have a Council. This opinion probably has been derived from the example in England. It would be very proper for every gentleman to consider attentively, whether that example ought to be imitated by us. Altho' it be a respectable example, yet in my opinion very satisfactory reasons can be assigned for a departure from it in this Constitution.

It was very difficult, immediately on our separation from Great-Britain, to disengage ourselves entirely from ideas of government we had been used to. We had been accus-

tomed

tomed to a Council under the old government, and took it for granted we ought to have one under the new. But examples ought not to be implicitly followed; and the reasons which prevail in Great-Britain for a Council, do not apply equally to us. In that country the executive authority is vested in a magistrate who holds it by birth-right. He has great powers and prerogatives; and it is a constitutional maxim, *that he can do no wrong*. We have experienced that he can do wrong, yet no man can say so in his own country. There are no courts to try him for any crimes; nor is there any constitutional method of depriving him of his throne. If he loses it, it must be by a general resistance of his people contrary to *forms* of law, as at the revolution which took place about a hundred years ago. It is therefore of the utmost moment in that country, that whoever is the instrument of any act of government should be personally responsible for it, since the King is not; and for the same reason, that no act of government should be exercised but by the instrumentality of some person, who can be accountable for it. Every thing therefore that the King does must be by some *advice*, and the adviser of course answerable. Under our Constitution we are much happier. No man has an authority to injure another with impunity. No man is better than his fellow-citizens, nor can pretend to any superiority over the meanest man in the country. If the President does a single act, by which the people are prejudiced, he is punishable himself, and no other man merely to screen him. If he commits any misdemeanor in office, he is impeachable, removable from office, and incapacitated to hold any office of honour, trust or profit. If he commits any crime, he is punishable by the laws of his country, and in capital cases may be deprived of his life. This being the case, there is not the same reason here for having a Council, which exists in England. It is, however, much to be desired, that a man who has such extensive and important business to perform, should have the means of some assistance to enable him to discharge his arduous employment. The advice of the principal executive officers, which he can at all times command, will in my opinion answer this valuable purpose. He can at no time want advice, if he desires it, as the principal officers will always be on the spot.

spot. Those officers from their abilities and experience, will probably be able to give as good, if not better advice, than any Counsellors would do; and the solemnity of the advice in writing, which must be preserved, would be a great check upon them.

Besides these considerations, it was difficult for the Convention to prepare a Council that would be unexceptionable. That jealousy which naturally exists between the different states, enhanced this difficulty. If a few Counsellors were to be chosen from the northern, southern or middle states, or from a few states only, undue preference might be given to those particular states from which they should come. If to avoid this difficulty, one Counsellor should be sent from each state, this would require great expence, which is a consideration at this time of much moment, especially as it is probable, that by the method proposed, the President may be equally well advised without any expence at all.

We ought also to consider, that had he a Council, by whose advice he was bound to act, his responsibility in all such cases must be destroyed. You surely would not oblige him to follow their advice, and punish him for obeying it. If called upon on any occasion of dislike, it would be natural for him to say, "You know my Council are men of integrity and ability: I could not act against their opinions, though I confess my own was contrary to theirs." This, Sir, would be pernicious. In such a situation, he might easily combine with his Council, and it might be impossible to fix a fault upon him. It would be difficult often to know, whether the President or Counsellors were most to blame. A thousand plausible excuses might be made, which would escape detection. But the method proposed in the Constitution creates no such embarrassment. It is plain and open. And the President will personally have the credit of good, or the censure of bad measures; since, though he may ask advice, he is to use his own judgment in following or rejecting it. For all these reasons I am clearly of opinion, that the clause is better as it stands than if the President were to have a Council. I think every good that can be derived from the institution of a Council, may be expected from the advice of these officers, without its being liable to the disadvantages to which it appears to me the institution of a Council would be.

Another

Another power that he has is to grant pardons, except in cases of impeachment. I believe it is the sense of a great part of America, that this power should be exercised by their Governors. It is in several states on the same footing that it is here. It is the genius of a republican government, that the laws should be rigidly executed without the influence of favour or ill-will: That when a man commits a crime, however powerful he or his friends may be, yet he should be punished for it; and on the other hand, though he should be universally hated by his country, his real guilt alone as to the particular charge is to operate against him. This strict and scrupulous observance of justice is proper in all governments, but it is particularly indispensable in a republican one; because in such a government, the law is superior to every man, and no man is superior to another. But though this general principle be unquestionable, surely there is no gentleman in the committee, who is not aware that there ought to be exceptions to it; because there may be many instances, where though a man offends against the *letter* of the law, yet peculiar circumstances in his case may entitle him to mercy. It is impossible for any general law to foresee and provide for all possible cases that may arise, and therefore an inflexible adherence to it in every instance, might frequently be the cause of very great injustice. For this reason, such a power ought to exist somewhere; and where could it be more properly vested, than in a man who had received such strong proofs of his possessing the highest confidence of the people? This power however only refers to offences against the United States, and not against particular states. Another reason for the President possessing this authority, is this: It is often necessary to convict a man by means of his accomplices: We have sufficient experience of that in this country. A criminal would often go unpunished, were not this method to be pursued against him. In my opinion, till an accomplice's own danger is removed, his evidence ought to be regarded with great diffidence. If in civil causes of property, a witness must be entirely disinterested, how much more proper is it he should be so in cases of life and death! This power is naturally vested in the President, because it is his duty to watch over the public safety, and as that may frequently require

require the evidence of accomplices to bring great offenders to justice, he ought to be entrusted with the most effectual means of procuring it.

I beg leave farther to observe, that for another reason I think there is a propriety in leaving this power to the general discretion of the executive magistrate, rather than to fetter it in any manner which has been proposed. It may happen, that many men, upon plausible pretences, may be seduced into very dangerous measures against their country. They may aim by an insurrection to redress imaginary grievances, at the same time believing, upon false suggestions, that their exertions are necessary to save their country from destruction. Upon cool reflection however, they possibly are convinced of their error, and clearly see thro' the treachery and villainy of their leaders. In this situation, if the President possessed the power of pardoning, they probably would immediately throw themselves on the equity of the government, and the whole body be peaceably broke up. Thus, at a critical moment, the President might prevent perhaps a civil war. But if there was no authority to pardon, in that delicate exigency, what would be the consequence? The principle of self-preservation would prevent their parting. Would it not be natural for them to say, "We shall be punished if we disband. Were we sure of mercy we would peaceably part. But we know not that there is any chance of this. We may as well meet one kind of death as another. We may as well die in the field as at the gallows." I therefore submit to the committee, if this power be not highly necessary for such a purpose. We have seen a happy instance of the good effect of such an exercise of mercy in the state of Massachusetts, where very lately there was so formidable an insurrection. I believe a great majority of the insurgents were drawn into it by false artifices. They at length saw their error, and were willing to disband. Government, by a wise exercise of lenity, after having shewn its power, generally granted a pardon; and the whole party were dispersed. There is now as much peace in that country as in any state in the union.

A particular instance which occurs to me, shews the utility of this power very strongly. Suppose we were involved in war. It would be then necessary to know the designs

designs of the enemy. This kind of knowledge cannot always be procured but by means of *spies*, a set of wretches whom all nations despise, but whom all employ; and as they would assuredly be used against us, a principle of self defence would urge and justify the use of them on our part. Suppose therefore the President could prevail upon a man of some importance to go over to the enemy, in order to give him secret information of his measures. He goes off privately to the enemy. He feigns resentment against his country for some ill usage, either real or pretended, and is received possibly into favour and confidence. The people would not know the purpose for which he was employed. In the mean time he secretly informs the President of the enemy's designs, and by this means, perhaps those designs are counteracted, and the country saved from destruction. After his business is executed, he returns into his own country, where the people, not knowing he had rendered them any service, are naturally exasperated against him for his supposed treason. I would ask any gentleman whether the President ought not to have the power of pardoning this man. Suppose the concurrence of the Senate, or any other body was necessary, would this obnoxious person be properly safe? We know in every country there is a strong prejudice against the executive authority. If a prejudice of this kind, on such an occasion, prevailed against the President, the President might be suspected of being influenced by corrupt motives, and the application in favour of this man be rejected. Such a thing might very possibly happen when the prejudices of party were strong, and therefore no man so clearly entitled as in the case I have supposed, ought to have his life exposed to so hazardous a contingency.

The power of impeachment is given by this Constitution, to bring great offenders to punishment. It is calculated to bring them to punishment for crimes which it is not easy to describe, but which every one must be convinced is a high crime and misdemeanor against the government. This power is lodged in those who represent the great body of the people, because the occasion for its exercise will arise from acts of great injury to the community, and the objects of it may be such as cannot be easily reached by an ordinary tribunal. The trial belongs to the Senate,

Senate, lest an inferior tribunal should be too much awed by so powerful an accuser. After a trial thus solemnly conducted, it is not probable that it would happen once in a thousand times, that a man actually convicted, would be entitled to mercy ; and if the President had the power of pardoning in such a case, this great check upon high officers of state would lose much of its influence. It seems therefore proper, that the general power of pardoning should be abridged in this particular instance. The punishment annexed to conviction on impeachment, can only be removal from office, and disqualification to hold any place of honour, trust or profit. But the person convicted is further liable to a trial at common law, and may receive such common law punishment as belongs to a description of such offences, if it be one punishable by that law. I hope, for the reasons I have stated, that the whole of this clause will be approved by the committee. The regulations altogether, in my opinion, are as wisely contrived as they could be. It is impossible for imperfect beings to form a perfect system. If the present one may be productive of possible inconveniences, we are not to reject it for that reason, but inquire whether any other system could be devised which would be attended with fewer inconveniences, in proportion to the advantages resulting. But we ought to be exceedingly attentive in examining, and still more cautious in deciding, lest we should condemn what may be worthy of applause, or approve of what may be exceptionable. I hope, that in the explanation of this clause, I have not improperly taken up the time of the committee.

Mr. *Miller* acknowledged, that the explanation of this clause by the Member from Edenton, had obviated some objections which he had had to it : But still he could not entirely approve of it. He could not see the necessity of vesting this power in the President. He thought that his influence would be too great in the country, and particularly over the military, by being the Commander in Chief of the army, navy and militia. He thought he could too easily abuse such extensive powers ; and was of opinion, that Congress ought to have power to direct the motions of the army. He considered it as a defect in the Constitution,

sution, that it was not expressly provided that Congress should have the direction of the motions of the army.

Mr. *Spaight* answered, that it was true that the command of the army and navy was given to the President : But that Congress, who had the power of raising armies, could certainly prevent any abuse of that authority in the President. That they alone had the means of supporting armies, and that the President was impeachable if he in any manner abused his trust. He was surprised that any objection should be made to giving the command of the army to one man : That it was well known, that the direction of an army could not be properly exercised by a numerous body of men : That Congress had in the last war given the exclusive command of the army to the Commander in Chief ; and that if they had not done so, perhaps the independence of America would not have been established.

Mr. *Porter*—Mr. Chairman, There is a power vested in the Senate and President to make treaties, which shall be the supreme law of the land. Which among us can call them to account ? I always thought that there could no proper exercise of power, without the suffrage of the people : Yet the House of Representatives has no power to intermeddle with treaties. The President and seven Senators, as nearly as I can remember, can make a treaty which will be of great advantage to the northern states, and equal injury to the southern states. They might give up the rivers and territory of the southern states : Yet in the preamble of the Constitution, they say, *all the People* have done it. I should be glad to know what power there is of calling the President and Senate to account.

Mr. *Spaight* answered, that under the Confederation, two-thirds of the states might make treaties. That if the Senators from all the states attended when a treaty was about to be made, two-thirds of the states would have a voice in its formation. He added, that he would be glad to ask the gentleman, what mode there was of calling the present Congress to account.

Mr. *Porter* repeated his objection. He hoped that gentlemen would not impose on the House. That the President could make treaties with two-thirds of the Senate : That the President in that case, voted rather in a legislative

give, than in an executive capacity, which he thought impolitic.

Governor *Johnston*—Mr. Chairman, In my opinion, if there be any difference between this Constitution and the Confederation, with respect to treaties, the Constitution is more safe than the Confederation. We know that two Members from each state, have a right by the Confederation to give the vote of that state, and two-thirds of the states have a right also to make treaties. By this Constitution two-thirds of the Senators cannot make treaties without the concurrence of the President. Here is then an additional guard. The calculation that seven or eight Senators, with the President, can make treaties, is totally erroneous. Fourteen is a quorum. Two-thirds of which are ten. It is upon the improbable supposition that they will not attend, that the objection is founded, that ten men with the President can make treaties. Can it be reasonably supposed that they will not attend when the most important business is agitated; when the interests of their respective states are most immediately affected.

Mr. *MacLaine* observed, that the gentleman was out of order with his objection. That they had not yet come to the clause which enables the Senate and President to make treaties.

The second clause of the second section read.

Mr. *Spencer*—Mr. Chairman, I rise to declare my disapprobation of this likewise. It is an essential article in our Constitution, that the legislative, the executive and the supreme judicial powers of government, ought to be forever separate and distinct from each other. The Senate in the proposed government of the United States, are possessed of the legislative authority in conjunction with the House of Representatives. They are likewise possessed of the sole power of trying all impeachments, which not being restrained to the officers of the United States, may be intended to include all the officers of the several states in the union. And by this clause they possess the chief of the executive power—they are in effect to form treaties, which are to be the law of the land, and they have obviously in effect the appointment of all the officers of the United States; the President may nominate, but they have a negative upon his nomination, till he has exhausted the number.

ber of those he wishes to be appointed : He will be obliged finally to acquiesce in the appointment of those which the Senate shall nominate, or else no appointment will take place. Hence it is easy to perceive, that the President, in order to do any business, or to answer any purpose in his department of his office, and to keep himself out of perpetual hot water, will be under a necessity to form a connection with that powerful body, and be contented to put himself at the head of the leading members who compose it. I do not expect at this day, that the outline and organization of this proposed government will be materially altered. But I cannot but be of opinion, that the government would have been infinitely better and more secure, if the President had been provided with a standing Council, composed of one Member from each of the states, the duration of whose office might have been the same as that of the President's office, or for any other period that might have been thought more proper. For it can hardly be supposed, that if two Senators can be sent from each state, who are fit to give counsel to the President, that one such cannot be found in each state, qualified for that purpose. Upon this plan, one half the expence of the Senate, as a standing Council to the President in the recess of Congress, would evidently be saved ; each state would have equal weight in this Council, as it has now in the Senate : And what renders this plan the more eligible is, that two very important consequences would result from it, which cannot result from the present plan. The first is, that the whole executive department, being separate and distinct from that of the legislative and judicial, would be amenable to the justice of the land—the President and his Council, or either or any of them, might be impeached, tried and condemned for any misdemeanor in office. Whereas on the present plan proposed, the Senate who are to advise the President, and who in effect are possessed of the chief executive power, let their conduct be what it will, are not amenable to the public justice of their country ; if they may be impeached, there is no tribunal invested with jurisdiction to try them. It is true that the proposed Constitution provides, that when the President is tried the Chief-Justice shall preside. But I take this to be very little more than a farce. What can the Senate try him for ? For doing

ing that which they have advised him to do, and which without their advice he would not have done. Except what he may do in a military capacity, when I presume he will be entitled to be tried by a court-martial of General officers, he can do nothing in the executive department without the advice of the Senate, unless it be to grant pardons, and adjourn the two Houses of Congress to some day to which they cannot agree to adjourn themselves, probably to some term that may be convenient to the leading Members of the Senate. I cannot conceive therefore, that the President can ever be tried by the Senate with any effect, or to any purpose, for any misdemeanor in his office, unless it should extend to high treason, or unless they should wish to fix the odium of any measure on him, in order to exculpate themselves; the latter of which I cannot suppose will ever happen.

Another important consequence of the plan I wish had taken place, is, that the office of the President being thereby unconnected with that of the legislative, as well as the judicial, he would enjoy that independence which is necessary to form the intended check upon the acts passed by the Legislature before they obtain the sanction of laws. But on the present plan, from the necessary connection of the President's office with that of the Senate, I have little ground to hope, that his firmness will long prevail against the overbearing power and influence of the Senate, so far as to answer the purpose of any considerable check upon the acts they may think proper to pass in conjunction with the House of Representatives. For he will soon find, that unless he inclines to compound with them, they can easily hinder and controul him in the principal articles of his office. But if nothing else could be said in favour of the plan of a standing Council to the President, independent of the Senate, the dividing the power of the latter would be sufficient to recommend it; it being of the utmost importance toward the security of the government, and the liberties of the citizens under it. For I think it must be obvious to every unprejudiced mind, that the combining in the Senate, the power of legislation with a controuling share in the appointment of all the officers of the United States, except those chosen by the people, and the power of trying all impeachments that may be found against such officers,

officers, invests the Senate at once with such an enormity of power, and with such an overbearing and uncontrollable influence, as is incompatible with every idea of safety to the liberties of a free country, and is calculated to swallow up all other powers, and to render that body a despotic aristocracy.

Mr. *Porter* recommended the most serious consideration when they were about to give away power. That they were not only about to give away power to legislate or make laws of a supreme nature, and to make treaties, which might sacrifice the most valuable interests of the community; but to give a power to the general government to drag the inhabitants to any part of the world as long as they pleased. That they ought not to put it in the power of any man or any set of men to do so; and that the representation was defective, being not a substantial immediate representation. He observed that as treaties were the supreme law of the land, the House of Representatives ought to have a vote in making them, as well as in passing them.

Mr. *J. M'Dowall*—Mr. Chairman, Permit me, Sir, to make a few observations, to shew how improper it is to place so much power in so few men, without any responsibility whatever. Let us consider what number of them is necessary to transact the most important business. Two-thirds of the members present, with the President, can make a treaty. Fourteen of them are a quorum, two-thirds of which are ten. These ten may make treaties and alliances. They may involve us in any difficulties, and dispose of us in any manner they please. Nay eight is a majority of a quorum, and can do every thing but make treaties. How unsafe are we, when we have no power of bringing those to an account. It is absurd to try them before their own body. Our lives and property are in the hands of eight or nine men. Will these gentlemen entrust their rights in this manner?

Mr. *Davie*—Mr. Chairman, Altho' treaties are mere conventional acts between the contracting parties, yet by the law of nations they are the supreme law of the land to their respective citizens or subjects. All civilized nations have concurred in considering them as paramount to an ordinary act of legislation. This concurrence is founded on the reciprocal convenience

venience and solid advantages arising from it. A due observance of treaties makes nations more friendly to each other, and is the only means of rendering less frequent those mutual hostilities, which tend to depopulate and ruin contending nations. It extends and facilitates that commercial intercourse, which founded on the universal protection of private property, has in a measure made the world one nation.

The power of making treaties has in all countries and governments been placed in the executive departments. This has not only been grounded on the necessity and reason arising from that degree of secrecy, design and dispatch, which are always necessary in negotiations between nations, but to prevent their being impeded, or carried into effect, by the violence, animosity and heat of parties, which too often infect numerous bodies. Both of these reasons preponderated in the foundation of this part of the system. It is true, Sir, that the late treaty between the United States and Great-Britain, has not, in some of the states, been held as the supreme law of the land. Even in this state an act of Assembly passed to declare its validity. But no doubt that treaty was the supreme law of the land without the sanction of the Assembly; because, by the Confederation, Congress had power to make treaties. It was one of those original rights of sovereignty which were vested in them; and it was not the deficiency of constitutional authority in Congress to make treaties, that produced the necessity of a law to declare their validity; but it was owing to the intire imbecility of the Confederation. On the principle of the propriety of vesting this power in the executive department, it would seem that the whole power of making treaties ought to be left to the President, who, being elected by the people of the United States at large, will have their general interest at heart. But that jealousy of executive power which has shewn itself so strongly in all the American governments, would not admit this improvement. Interest, Sir, has a most powerful influence over the human mind, and is the basis on which all the transactions of mankind are built. It was mentioned before, that the extreme jealousy of the little states, and between the commercial states and the non-importing states, produced the necessity of giving an equality of suffrage to the senate. The same causes made

it indispensable to give to the Senators, as Representatives of states, the power of making, or rather ratifying, treaties. Although it militates against every idea of just proportion, that the little state of Rhode-Island should have the same suffrage with Virginia, or the great commonwealth of Massachusetts ; yet the small states would not consent to confederate, without an equal voice in the formation of treaties. Without the equality, they apprehended that their interest would be neglected or sacrificed in negotiations. This difficulty could not be got over. It arose from the unalterable nature of things. Every man was convinced of the inflexibility of the little states in this point : It therefore became necessary to give them an absolute equality in making treaties.

The learned gentleman on my right [Mr. Spencer] after saying that this was an enormous power, and that blending the different branches of government was dangerous, said, that such accumulated powers were inadmissible and contrary to all the maxims of writers. It is true, the great Montesquieu and several other writers, have laid it down as a maxim not to be departed from, that the legislative, executive and judicial powers, should be separate and distinct. But the idea that these gentlemen had in view, has been misconceived or misrepresented. An absolute and complete separation is not meant by them. It is impossible to form a government upon these principles. Those states who had made an absolute separation of these three powers their leading principle, have been obliged to depart from it. It is a principle in fact, which is not to be found in any of the state governments. In the government of New-York, the Executive and Judiciary have a negative similar to that of the President of the United States. This is a junction of all the three powers, and has been attended with the most happy effects. In this state and most of the others, the executive and judicial powers are dependent on the Legislature. Has not the Legislature of this state the power of appointing the Judges ? Is it not in their power also to fix their compensation ? What independence can there be in persons who are obliged to be obsequious and cringing for their office and salary ? Are not our Judges dependent on the Legislature for every morsel they eat ? It is not difficult to discern what effect

effect this may have on human nature. The meaning of this maxim I take to be this, that the whole legislative, executive, and judicial powers, should not be exclusively blended in any one particular instance. The Senate try impeachments. This is their only judicial cognizance. As to the ordinary objects of a judiciary, such as the decision of controversies, the trial of criminals, &c. the judiciary is perfectly separate and distinct from the legislative and executive branches. The House of Lords in England, have great judicial powers, yet this is not considered as a blemish in their Constitution. Why? Because they have not the whole legislative power. Montesquieu, at the same time that he laid down this maxim, was writing in praise of the British government. At the very time he recommended this distinction of powers, he passed the highest eulogium on a Constitution wherein they were *all* partially blended. So that the meaning of the maxim, as laid down by him and other writers, must clearly be, that these three branches must not be entirely blended in one body. And this system before you, comes up to the maxim more completely than the favourite government of Montesquieu. The gentleman from Anson has said, that the Senate destroys the independence of the President, because they must confirm the nomination of officers. The necessity of their interfering in the appointment of officers, resulted from the same reason which produced the equality of suffrage. In other countries, the Executive or Chief Magistrate alone nominates and appoints officers. The small states would not agree that the House of Representatives should have a voice in the appointment to offices; and the extreme jealousy of all the states, would not give it to the President alone. In my opinion, it is more proper as it is than it would be in either of those cases. The interest of each state will be equally attended to in appointments, and the choice will be more judicious by the junction of the Senate to the President. Except in the appointments of officers, and making of treaties, he is not joined with them in any instance. He is perfectly independent of them in his election. It is impossible for human ingenuity to devise any mode of election better calculated to exclude undue influence. He is chosen by Electors appointed by the people. He is elected on the same day in every state,

so that there can be no possible combination between the Electors. The affections of the people can be the only influence to procure his election. If he make a judicious nomination, is it to be presumed that the Senate will not concur in it? Is it to be supposed the Legislatures will choose the most depraved men in the states to represent them in Congress? Should he nominate unworthy characters, can it be reasonably concluded that they will confirm it? He then says, that the Senators will have influence to get themselves re-elected, nay, that they will be perpetually elected. I have very little apprehension on this ground. I take it for granted, that the man who is once a Senator, will very probably be out for the next six years. Legislative influence changes—Other persons rise, who have particular connections to advance them to office. If the Senators stay six years out of the state governments, their influence will be greatly diminished. It will be impossible for the most influential character to get himself re-elected after being out of the country so long. There will be an entire change in six years. Such futile objections I fear proceed from an aversion to any general system. The same learned gentleman says, that it would be better, were a Council consisting of one from every state, substituted to the Senate. Another gentleman has objected to the smallness of this number. This shews the impossibility of satisfying all mens minds. I beg this committee to place these two objections together, and see their glaring inconsistency. If there were thirteen Counsellors, in the manner he proposes, it would destroy the responsibility of the President. He must have acted also with a majority of them. A majority of them is seven, which would be a quorum—a majority of these would be four, and every act to which the concurrence of the Senate and the President is necessary, could be decided by these four. Nay, less than a majority, even one would suffice to enable them to do the most important acts. This, Sir, would be the effect of this Council. The dearest interests of the community would be trusted to two men. Had this been the case, the loudest clamours would have been raised, with justice, against the Constitution, and these gentlemen would have loaded their own proposition with the most virulent abuse.

On a due consideration of this clause, it appears that this power could not have been lodged as safely any where else as where it is. The honourable gentleman [Mr. McDowall] has spoken of a consolidation in this government. That is a very strange inconsistency, when he points out at the same time, the necessity of lodging the power of making treaties, with the Representatives, where the idea of a consolidation can alone exist; and when he objects to placing it in the Senate, where the federal principle is completely preserved. As the Senate represents the sovereignty of the states, whatever might affect the states in their political capacity, ought to be left to them. This is the certain means of preventing a consolidation. How extremely absurd is it to call that disposition of power a consolidation of the states, which must to all eternity prevent it? I have only to add the principle upon which the General Convention went.—That the power of making treaties could no where be so safely lodged as in the President and Senate; and the extreme jealousy subsisting between some of the states, would not admit of it elsewhere. If any man will examine the operation of that jealousy, in his own breast, as a citizen of North-Carolina, he will soon feel the inflexibility that results from it, and perhaps be induced to acknowledge the propriety of this arrangement.

Mr. *McDowall* declared that he was of the same opinion as before, and that he believed the observations which the gentleman had made on the apparent inconsistency of his remarks, would have very little weight with the committee. That giving such extensive powers to so few men in the Senate, was extremely dangerous; and that he was not the more reconciled to it from its being brought about by the inflexibility of the small, pitiful states to the north. He supposed, that eight Members in the Senate from those states, with the President, might do the most important acts.

Mr. *Spaight*—Mr. Chairman, The gentleman objects to the smallness of the number, and to their want of responsibility. He argues as if the Senators were never to attend, and as if the northern Senators were to attend more regularly than those from the south. Nothing can be more unreasonable than to suppose, that they will be absent

sent on the most important occasions. What responsibility is there in the present Congress that is not in the Senate? What responsibility is there in our state Legislature? The Senators are as responsible as the Members of our Legislature. It is to be observed, that though the Senators are not impeachable, yet the President is. He may be impeached and punished for giving his consent to a treaty, whereby the interest of the community is manifestly sacrificed.

Mr. *Spencer*—Mr. Chairman, The worthy gentleman from Halifax has endeavoured to obviate my objections against the want of responsibility in the President and Senators, and against the extent of their power. He has not removed my objections. It is totally out of their power to shew any degree of responsibility. The Executive is tried by his advisers. The reasons I urged are so cogent and strong with me, that I cannot approve of this clause. I can see nothing of any weight against them. [Here Mr. Spencer spoke so low that he could not be distinctly heard.] I would not give the President and Senators power to make treaties, because it destroys their responsibility. If a bad treaty be made, and he be impeached for it, the Senate will not pronounce sentence against him, because they advised him to make it. If they had legislative power only, it would be unexceptionable; but when they have the appointment of officers, and such extensive executive powers, it gives them such weight as is inadmissible. Notwithstanding what gentlemen have said in defence of the clause, the influence of the Senate still remains equally formidable to me. The President can do nothing unless they concur with him. In order to obtain their concurrence, he will compromise with them. Had there been such a Council as I mentioned, to advise him, the Senate would not have had such dangerous influence, and the responsibility of the President would have been secured. This seems obviously clear to be the case.

Mr. *Porter*—Mr. Chairman, I only rise to make one observation on what the gentleman has said. He told us, that if the Senators were not amenable the President was—I beg leave to ask the gentleman, if it be not inconsistent that they should punish the President, whom they advised themselves to do what he is impeached for. My
objection

objection still remains. I cannot find it in the least obviated.

Mr. *Bloodworth* desired to be informed whether treaties were not to be submitted to the Parliament in Great-Britain before they were valid.

Mr. *Iredell*—Mr. Chairman, The objections to this clause deserve great consideration. I believe it will be easy to obviate the objections against it, and that it will be found to have been necessary, for the reasons stated by the gentleman from Halifax, to vest this power in some body composed of Representatives of states, where their voices should be equal: For in this case the sovereignty of the states is particularly concerned; and the great caution of giving the states an equality of suffrage in making treaties, was for the express purpose of taking care of that sovereignty, and attending to their interests, as political bodies, in foreign negotiations. It is objected to as improper, because if the President or Senate should abuse their trust, there is not sufficient responsibility, since he can only be tried by the Senate, by whose advice he acted; and the Senate cannot be tried at all. I beg leave to observe, that when any man is impeached, it must be for an error of the heart, and not of the head. God forbid, that a man in any country in the world, should be liable to be punished for want of judgment. This is not the case here. As to errors of the heart there is sufficient responsibility. Should these be committed, there is a ready way to bring him to punishment. This is a responsibility which answers every purpose that could be desired by a people jealous of their liberty. I presume that if the President, with the advice of the Senate, should make a treaty with a foreign power, and that treaty should be deemed unwise, or against the interest of the country, yet if nothing could be objected against it but the difference of opinion between them and their constituents, they could not justly be obnoxious to punishment. If they were punishable for exercising their own judgment, and not that of their constituents, no man who regarded his reputation would accept the office either of a Senator or President. Whatever mistake a man may make, he ought not to be punished for it, nor his posterity rendered infamous. But if a man be a villain, and wilfully abuses his trust, he is to be held up as a public offender, and ignominiously punished.

A public officer ought not to act from a principle of fear. Were he punishable for want of judgment, he would be continually in dread. But when he knows that nothing but real guilt can disgrace him, he may do his duty firmly if he be an honest man, and if he be not, a just fear of disgrace, may perhaps, as to the public, have nearly the effect of an intrinsic principle of virtue. According to these principles, I suppose the only instances in which the President would be liable to impeachment, would be where he had received a bribe, or had acted from some corrupt motive or other. If the President had received a bribe without the privity or knowledge of the Senate, from a foreign power, and had, under the influence of that bribe, had address enough with the Senate, by artifices and misrepresentations, to seduce their consent to a pernicious treaty—if it appeared afterwards that this was the case, would not that Senate be as competent to try him as any other persons whatsoever? Would they not exclaim against his villainy? Would they not feel a particular resentment against him for their being made the instrument of his treacherous purposes? In this situation, if any objection could be made against the Senate as a proper tribunal, it might more properly be made by the President himself, lest their resentment should operate too strongly, rather than by the public, on the ground of a supposed partiality. The President must certainly be punishable for giving false information to the Senate. He is to regulate all intercourse with foreign powers, and it is his duty to impart to the Senate every material intelligence he receives. If it should appear that he has not given them full information, but has concealed important intelligence which he ought to have communicated, and by that means induced them to enter into measures injurious to their country, and which they would not have consented to had the true state of things been disclosed to them—In this case, I ask whether, upon an impeachment for a misdemeanor upon such an account, the Senate would probably favour him? With respect to the impeachability of the Senate, that is a matter of doubt. There have been no instances of impeachment for legislative misdemeanors: And we shall find, upon examination, that the inconveniences resulting from such impeachments, would more than preponderate the

the advantages. There is no greater honour in the world, than being the representative of a free people—There is no trust on which the happiness of the people has a greater dependence. Yet, whoever heard of impeaching a Member of the Legislature for any legislative misconduct? It would be a great check on the public business, if a Member of the Assembly was liable to punishment for his conduct as such. Unfortunately it is the case, not only in other countries but even in this, that divisions and differences in opinion will continually arise. On many questions, there will be two or more parties. These often judge with little charity of each other, and attribute every opposition to their own system to an ill motive. We know this very well from experience; but, in my opinion, this constant suspicion is frequently unjust. I believe in general, both parties really think themselves right, and that the majority of each commonly act with equal innocence of intention. But, with the usual want of charity in these cases, how dangerous would it be to make a Member of the Legislature liable to impeachment! A mere difference of opinion might be interpreted by the malignity of party, into a deliberate, wicked action. It, therefore, appears to me at least very doubtful, whether it would be proper to render the Senate impeachable at all; especially as in the branches of executive government, where their concurrence is required, the President is the primary agent, and plainly responsible; and they in fact are but a Council to validate proper, or restrain improper, conduct in him.—But if a Senator is impeachable, it could only be for corruption, or some other wicked motive; in which case, surely those Senators who had acted from upright motives, would be competent to try him. Suppose there had been such a Council as was proposed, consisting of thirteen, one from each state, to assist the President in making treaties, &c. more general alarm would have been excited, and stronger opposition made to this Constitution, than even at present—The power of the President would have appeared more formidable, and the states would have lost one half of their security; since, instead of two Representatives, which each has now for those purposes, they would have had but one. A gentleman from New-Hanover has asked, whether it is not the practice in Great-Britain to submit

submit treaties to Parliament, before they are esteemed valid. The King has the sole authority, by the laws of that country, to make treaties. After treaties are made, they are frequently discussed in the two Houses of Parliament; where, of late years, the most important measures of government have been narrowly examined. It is usual to move for an address of approbation; and such has been the complaisance of Parliament for a long time, that this seldom hath been withheld. Sometimes they pass an act in conformity to the treaty made: But this I believe is not for the mere purpose of confirmation, but to make alterations in a particular system, which the change of circumstances requires. The constitutional power of making treaties is vested in the crown; and the power with whom a treaty is made, considers it as binding without any act of Parliament, unless an alteration by such is provided for in the treaty itself, which I believe is sometimes the case. When the treaty of peace was made in 1763, it contained stipulations for the surrender of some islands to the French. The islands were given up, I believe, without any act of Parliament. The power of making treaties is very important, and must be vested somewhere, in order to counteract the dangerous designs of other countries, and to be able to terminate a war when it is begun. Were it known that our government was weak, two or more European powers might combine against us. Would it not be politic to have some power in this country, to obviate this danger by a treaty? If this power was injudiciously limited, the nations where the power was possessed without restriction, would have greatly the advantage of us in negotiation; and every one must know, according to modern policy, of what moment an advantage in negotiation is. The honourable Member from Anson said, that the accumulation of all the different branches of power in the Senate, would be dangerous. The experience of other countries shews that this fear is without foundation. What is the Senate of Great-Britain opposed to the House of Commons, although it be composed of an hereditary nobility, of vast fortunes, and entirely independent of the people? Their weight is far inferior to that of the Commons. Here is a strong instance of the accumulation of powers of the different branches of government without producing any inconvenience. That

Senate,

Senate, Sir, is a separate branch of the Legislature, is the great constitutional Council of the Crown, and decides on lives and fortunes in impeachments, besides being the ultimate tribunal for trying controversies respecting private rights. Would it not appear that all these things should render them more formidable than the other House? Yet the Commons have generally been able to carry every thing before them. The circumstance of their representing the great body of the people, alone gives them great weight. This weight has great authority added to it, by their possessing the right (a right given to the people's Representatives in Congress) of exclusively originating money bills. The authority over money will do every thing. A government cannot be supported without money. Our Representatives may at any time compel the Senate to agree to a reasonable measure, by withholding supplies till the measure is consented to. There was a great debate in the Convention, whether the Senate should have an equal power of originating money bills. It was strongly insisted by some that they should; but at length a majority thought it unadvisable, and the clause was passed as it now stands. I have reason to believe our own Representatives had a great share in establishing this excellent regulation, and in my opinion they deserve the public thanks for it. It has been objected, that this power must necessarily injure the people, inasmuch as a bare majority of the Senate might alone be assembled, and eight would be sufficient for a decision. This is on a supposition that many of the Senators would neglect attending. It is to be hoped that the gentlemen who will be honored with seats in Congress, will faithfully execute their trust, as well in attending as in every other part of their duty. An objection of this sort, will go against all government whatever. Possible abuse and neglect of attendance, are objections which may be urged against any government which the wisdom of man is able to construct. When it is known of how much importance attendance is, no Senator would dare to incur the universal resentment of his fellow-citizens, by grossly absenting himself from his duty. Do gentlemen mean that it ought to have been provided by the Constitution, that the whole body should attend before particular business was done? Then it would be in the power of a few

men, by neglecting to attend, to obstruct the public business, and possibly bring on the destruction of their country. If this power be improperly vested, it is incumbent on gentlemen to tell us in what body it could be more safely and properly lodged. I believe; on a serious consideration, it will be found that it was necessary, for the reasons mentioned by the gentleman from Halifax, to vest the power in the Senate or in some other body representing equally the sovereignty of the states, and that the power, as given in the Constitution, is not likely to be attended with the evils which some gentlemen apprehend. The only real security of liberty in any country, is the jealousy and circumspection of the people themselves. Let them be watchful over their rulers. Should they find a combination against their liberties, and all other methods appear insufficient to preserve them, they have, thank God, an ultimate remedy. That power which created the government, can destroy it. Should the government, on trial, be found to want amendments, those amendments can be made in a regular method, in a mode prescribed by the Constitution itself. Massachusetts, South-Carolina, New-Hampshire, and Virginia, have all proposed amendments; but they all concurred in the necessity of an immediate adoption. A constitutional mode of altering the Constitution itself, is perhaps, what has never been known among mankind before. We have this security, in addition to the natural watchfulness of the people, which I hope will never be found wanting. The objections I have answered, deserved all possible attention, and for my part I shall always respect that jealousy which arises from the love of public liberty.

Mr. *Spencer*—Mr. Chairman, I think that no argument can be used to shew that this power is proper. If the whole legislative body—if the House of Representatives do not interfere in making treaties, I think they ought at least to have the sanction of the whole Senate. The worthy gentleman last up, has mentioned two cases wherein he supposes that impeachments will be fairly tried by the Senators. He supposes a case where the President had been guilty of corruption, and by that means had brought over and got the sanction of two-thirds of the Senators, and that if it should be afterwards found that he brought them

them over by artifices, that they would be a proper body to try him. As they will be ready to throw the odium off their own shoulders on him, they may pronounce sentence against him. He mentions another case, where, if a majority was obtained by bribing some of the Senators, that those who were innocent might try those who were guilty. I think that these cases will happen but rarely in comparison to other cases, where the Senators may advise the President to deviate from his duty, and where a majority of them may be guilty. And should they be tried by their own body when thus guilty, does not every body see the impropriety of it? It is universally disgraceful, odious, and contemptible to have a trial where the Judges are accessory to the misdemeanor of the accused. Whether the accusation against him be true or not, if afraid for themselves, they will endeavour to throw the odium upon him. There is an extreme difference between the case of trying this officer and that of trying their own Members. They are so different that I consider they will always acquit their own Members, and if they condemn the President, it will be to exonerate themselves. It appears to me, that the powers are too extensive, and not sufficiently guarded. I do not wish that an aristocracy should be instituted. An aristocracy may arise out of this government, though the Members be not hereditary. I would therefore wish that every guard should be placed, in order to prevent it. I wish gentlemen would reflect that the powers of the Senate are so great in their legislative and judicial capacities, that when added to their executive powers, particularly their interference in the appointment of all officers in the continent, that they will render their power so enormous as to enable them to destroy our rights and privileges. This, Sir, ought to be strictly guarded against.

Mr. Iredell—Mr. Chairman, The honourable gentleman must be mistaken. He suggests that an aristocracy will arise out of this government. Is there any thing like an aristocracy in this government? This insinuation is uncandidly calculated to alarm and catch prejudices. In this government there is not the least symptom of an aristocracy, which is, where the government is in a select body of men entirely independent of the people; as for instance,

stance, an hereditary nobility, or a Senate for life filling up vacancies by their own authority. Will any Member of this government hold his station by any such tenure? Will not all authority flow, in every instance, directly or indirectly from the people? It is contended by that gentleman, that the addition of the power of making treaties, to their other powers, will make the Senate dangerous: That they would be even dangerous to the Representatives of the people. The gentleman has not proved this in theory. Whence will he adduce an example to prove it? What passes in England, directly disproves his assertion. In that country the Representatives of the people are chosen under undue influence; frequently by direct bribery and corruption. They are elected for seven years, and many of the Members hold offices under the crown, some during pleasure, others for life. They are also not a genuine representation of the people, but, from a change of circumstances, a mere shadow of it. Yet under these disadvantages, they having the sole power of originating money bills, it has been found that the power of the King and Lords is much less considerable than theirs. The high prerogatives of the King, and the great power and wealth of the Lords, have been more than once mentioned in the course of the debates. If under such circumstances, such Representatives, mere shadows of Representatives, by having the power of the purse, and the sacred name of the people to rely upon, are an over match for the King and Lords, who have such great hereditary qualifications, we may safely conclude that our own Representatives, who will be a genuine representation of the people, and have equally the right of originating money bills, will at least be a match for the Senate, possessing qualifications so inferior to those of the House of Lords in England. It seems to be forgotten that the Senate is placed there for a very valuable purpose—as a guard against any attempt of consolidation. The Members of the Convention were as much averse to consolidation as any gentleman on this floor; but without this institution (I mean the Senate, where the suffrages of the states are equal) the danger would be greater. There ought to be some power given to the Senate to counteract the influence of the people by their biennial representation in the other House, in order

to preserve completely the sovereignty of the states. If the people through the medium of their Representatives possessed a share in making treaties and appointing officers, would there not be a greater balance of power in the House of Representatives than such a government ought to possess? It is true that it would be very improper if the Senate had authority to prevent the House of Representatives from protecting the people. It would be equally so, if the House of Representatives were able to prevent the Senate from protecting the sovereignty of the states. It is probable that either House would have sufficient authority to prevent much mischief. As to the suggestion of a tendency to aristocracy, it is totally groundless. I disdain every principle of aristocracy. There is not a shadow of an aristocratical principle in this government. The President is only chosen for four years—liable to be impeached—and dependent on the people at large for his re-election. Can this mode of appointment be said to have an aristocratical principle in it? The Senate is chosen by the Legislatures. Let us consider the example of other states, with respect to the construction of their Senate. In this point most of them differ; though they almost all concur in this, that the term of election for Senators is longer than that for Representatives. The reason of this is, to introduce stability into the laws, and to prevent that mutability which would result from annual elections of both branches. In New-York they are chosen for three years. In Virginia they are chosen for four years; and in Maryland they are chosen for five years. In this Constitution, although they are chosen for six years, one-third go out every second year (a method pursued in some of the State Constitutions) which at the same time secures stability to the laws, and a due dependence on the state Legislatures. Will any man say that there are any aristocratical principles in a body who have no power independent of the people, and whereof one-third of the Members are chosen every second year, by a wise and select body of Electors? I hope, therefore, that it will not be considered that there are any aristocratical principles in this government, and that it will be given up as a point not to be contended for. The gentleman contends that a Council ought to be instituted in this case. One objection ought to be compared

compared with another. It has been objected against the Constitution, that it will be productive of great expence. Had there been a Council, it would have been objected, that it was calculated for creating new offices and increasing the means of undue influence. Though *he* approves of a Council, *others* would not. As to offices, the Senate has no other influence but a restraint on improper appointments. The President proposes such a man for such an office—The Senate has to consider upon it—If they think him improper, the President must nominate another, whose appointment ultimately again depends upon the Senate. Suppose a man nominated by the President, with what face would any Senator object to him without a good reason? There must be some decorum in every public body. He would not say, “I do not choose this man, because a friend of mine wants the office.” Were he to object to the nomination of the President, without assigning any reason, his conduct would be reprobated, and still might not answer his purpose. Were an office to be vacant, for which an hundred men on the continent were equally well qualified, there would be an hundred chances to one, whether his friend would be nominated to it. This in effect, is but a restriction on the President. The power of the Senate would be more likely to be abused were it vested in a Council of Thirteen, of which there would be one from each state. One man could be more easily influenced than two. We have therefore a double security. I am firmly of opinion, that if you take all the powers of the President and Senate together, the vast influence of the Representatives of the people, will preponderate against them in every case where the public good is really concerned.

Mr. *Bloodworth*—Mr. Chairman, I confess I am sorry to take up any time; I beg leave to make a few observations, for it would be an Herculean task, and disagreeable to this committee, to mention every thing. It has indeed been objected and urged, that the responsibility of the Senate was not sufficient to secure the states. When we consider the length of the term for which they are elected, and the extent of their powers, we must be persuaded that there is no real security. A gentleman has said that the Assembly of North-Carolina are rogues. It is then probable

able that they may be corrupted. In this case we have not a sufficient check on those gentlemen who are gone six years. A parallel is drawn between them and the Members of our Assembly; but if you reflect a moment, you will find that the comparison is not good. There is a responsibility in the Members of the Assembly, at the end of a year they are liable to be turned out. This is not the case with the Senators. I beg gentlemen to consider the extreme difference between the two cases. Much is said about treaties. I do not dread this so much as what will arise from the jarring interests of the eastern, southern, and the middle states. They are different in soil, climate, customs, produce and every thing. Regulations will be made evidently to the disadvantage of some part of the community, and most probably to ours. I will not take up more of the time of the committee.

Third clause of the second section of the second article read.

Mr. *MacLaine*—It has been objected to this part, that the power of appointing officers was something like a monarchical power. Congress are not to be sitting at all times; they will only sit from time to time as the public business may render it necessary. Therefore the Executive ought to make temporary appointments, as well as receive Ambassadors and other Public Ministers. This power can be vested no where but in the Executive, because he is perpetually acting for the public. For though the Senate is to advise him in the appointment of officers, &c. yet, during their recess, the President must do this business or else it will be neglected, and such neglect may occasion public inconveniences. But there is an objection made to another part, that has not yet been read: His power of adjourning both Houses when they disagree, has been by some people construed to extend to any length of time. If gentlemen look at another part of the Constitution, they will find that there is a positive injunction that the Congress must meet at *least once* in every year: So that he cannot, were he so inclined, prevent their meeting within a year. One of the best provisions contained in it is, that he shall commission all officers of the United States, and shall take care that the laws be faithfully executed. If he takes care to see the laws faithfully executed, it will be
more

more than is done in any government on the continent, for I will venture to say that our government, and those of the other states, are, with respect to the execution of the laws, in many respects, mere cyphers.

Rest of the article read without any observations.

Article third, first and second sections read.

Mr. *Spencer*—Mr. Chairman, I have objections to this article. I object to the exclusive jurisdiction of the Federal Court in all cases of law and equity arising under the Constitution and the laws of the United States, and to the appellate jurisdiction of controversies between the citizens of different states, and a few other instances. To these I object because I believe they will be oppressive in their operation. I would wish that the Federal Court should not interfere or have any thing to do with controversies, to the decision of which the state judiciaries might be fully competent, nor with such controversies as must carry the people a great way from home. With respect to the jurisdiction of cases arising under the Constitution, when we reflect on the very extensive objects of the plan of government—the manner in which they may arise—and the multiplicity of laws that may be made with respect to them, the objection against it will appear to be well founded. If we consider nothing but the articles of taxation, duties, and excises, and the laws that might be made with respect to these, the cases will be almost infinite. If we consider that it is in contemplation that a stamp duty shall take place throughout the continent; that all contracts shall be on stamp paper; that no contracts should be of validity but what would be thus stamped; these cases will be so many that the consequences would be dreadful. It would be necessary to appoint Judges to the Federal Supreme Court, and other inferior departments, and such a number of inferior courts in every district and county, with a correspondent number of officers, that it would cost an immense expence without any apparent necessity; which must operate to the distress of the inhabitants.—There will be, without any manner of doubt, clashing and animosities between the jurisdiction of the Federal Courts and of the state courts, so that they will keep the country in hot water. It has been said that the impropriety of this was mentioned by some in the Convention.

I cannot see the reasons of giving the Federal Courts jurisdiction in these cases, but I am sure it will occasion great expence unnecessarily. The state judiciaries will have very little to do. It will be almost useless to keep them up. As all officers are to take an oath to support the general government, it will carry every thing before it. This will produce that consolidation through the United States which is apprehended. I am sure that I do not see that it is possible to avoid it. I can see no power that can keep up the little remains of the power of the states. Our rights are not guarded. There is no declaration of rights, to secure to every member of the society those unalienable rights which ought not to be given up to any government. Such a bill of rights would be a check upon men in power. Instead of such a bill of rights, this Constitution has a clause, which may warrant encroachments on the power of the respective state Legislatures. I know it is said that what is not given up to the United States will be retained by the individual states. I know it ought to be so, and should be so understood; but, Sir, it is not *declared* to be so. In the confederation it is expressly declared that all rights and powers, of any kind whatever, of the several states, which are not given up to the United States, are expressly and absolutely retained to be enjoyed by the states. There ought to be a bill of rights, in order that those in power may not step over the boundary between the powers of government and the rights of the people, which they may do, when there is nothing to prevent them. They may do so without a bill of rights; notice will not be readily taken of the encroachments of rulers, and they may go a great length, before the people are alarmed. Oppressions may therefore take place by degrees, but if there were express terms and bounds laid down, when these were passed by, the people would take notice of them, and oppressions would not be carried on to such a length. I look upon it therefore that there ought to be something to confine the power of this government within its proper boundaries. I know that several writers have said that a bill of rights is not necessary in this country; that some states had them not, and that others had. To these I answer, that those states that have them not as bills of right, strictly so called, have

them in the frame of their constitution, which is nearly the same.

There has been a comparison made of our situation with Great-Britain. We have no crown or prerogative of a King like the British Constitution. I take it, that the subject has been misunderstood. In Great-Britain, when the King attempts to usurp the rights of the people, the declaration and bill of rights are a guard against him. A bill of rights would be necessary here to guard against our rulers. I wish to have a bill of rights, to secure those unalienable rights, which are called by some respectable writers the *residuum* of human rights, which are never to be given up. At the same time that it would give security to individuals, it would add to the general strength. It might not be so necessary to have a bill of rights in the government of the United States, if such means had not been made use of, as endanger a consolidation of all the states; but at any event it would be proper to have one, because though it might not be of any other service, it would at least satisfy the minds of the people. It would keep the states from being swallowed up by a consolidated government. For the reasons I before gave, I think that the jurisdiction of the Federal Court, with respect to all cases in law and equity, and the laws of Congress, and the appeals in all cases between citizens of different states, &c. is inadmissible. I do not see the necessity that it should be vested with the cognizance of all these matters. I am desirous, and have no objection to their having one Supreme Federal Court for general matters; but if the Federal Courts have cognizance of those subjects which I mentioned, very great oppressions may arise. Nothing can be more oppressive than the cognizance with respect to controversies between citizens of different states. In all cases of appeal, those persons who are able to pay, had better pay down in the first instance, though it be unjust, than be at such a dreadful expence, by going such a distance to the Supreme Federal Court. Some of the most respectable states have proposed by way of amendment, to strike out a great part of these two clauses. If they be admitted as they are, it will render the country entirely unhappy. On the contrary, I see no inconvenience from reducing the power as has been proposed. I am of opinion that

that it is inconsistent with the happiness of the people to admit these two clauses. The state Courts are sufficient to decide the common controversies of the people, without distressing them by carrying them to such far distant tribunals. If I did not consider these two clauses to be dangerous, I should not object to them. I mean not to object to any thing that is not absolutely necessary. I wish to be candid, and not be prejudiced or warped.

Mr. *Spaight*—Mr. Chairman, The gentleman insinuates that differences existed in the Federal Convention respecting the clauses which he objects to. Whoever told him so was wrong, for I declare, that in that Convention, the unanimous desire of all, was to keep separate and distinct the objects of the jurisdiction of the federal from that of the state judiciary. They wished to separate them as judiciously as possible, and to consult the ease and convenience of the people. The gentleman objects to the cognizance of all cases in law and equity arising under the Constitution and the laws of the United States. This objection is very astonishing. When any government is established, it ought to have power to enforce its laws, or else it might as well have no power. What but that is the use of a Judiciary? The gentleman, from his profession, must know that no government can exist without a Judiciary to enforce its laws, by distinguishing the disobedient from the rest of the people, and imposing sanctions for securing the execution of the laws. As to the inconvenience of distant attendance, Congress has power of establishing inferior tribunals in each state, so as to accommodate every citizen. As Congress have it in their power will they not do it? Are we to elect men who will wantonly and unnecessarily betray us?

Mr. *Maclaine*—Mr. Chairman, I hoped that some gentleman more capable than myself, would have obviated the objections to this part. The objections offered by the gentleman, appear to me totally without foundation. He told us that these clauses tended to a consolidation of the states. I cannot see how the states are to be consolidated by establishing these two clauses. He enumerated a number of cases which would be involved within the cognizance of the Federal Courts; customs, excises, duties, stamp duties, a stamp on every article, on every contract,

in order to bring all persons into the Federal Court; and said that there would be necessarily courts in every district and county, which would be attended with enormous and needless expence, for that the state courts could do every thing. He went on further, and said that there would be a necessity of having sheriffs and other officers in these inferior departments. A wonderful picture indeed, drawn up in a wonderful manner! I will venture to say that the gentleman's suggestions are not warranted by any reasonable construction of the Constitution. The laws can, in general, be executed by the officers of the states. State courts and state officers will, for the most part, probably answer the purpose of Congress as well as any other. But the gentleman says that the state courts will be swallowed up by the Federal Courts. This is only a general assertion, unsupported by any probable reasons or arguments. The objects of each are separate and distinct. I suppose that whatever courts there may be, they will be established according to the convenience of the people. This we must suppose from the mode of electing and appointing the Members of the government. State officers will as much as possible be employed, for one very considerable reason. I mean to lessen the expence. But he imagines that the oath to be taken by officers, will tend to the subversion of our state governments and of our liberty. Can any government exist without fidelity in its officers? Ought not the officers of every government to give some security for the faithful discharge of their trust? The officers are only to be sworn to support the Constitution, and therefore will only be bound by their oath so far as it shall be strictly pursued. No officer will be bound by his oath to support any act that would violate the principles of the Constitution.

The gentleman has wandered out of his way, to tell us what has so often been said out of doors; that there is no declaration of rights, that consequently all our rights are taken away. It would be very extraordinary to have a bill of rights, because the powers of Congress are expressly defined, and the very definition of them is as valid and efficacious a check as a bill of rights could be, without the dangerous implication of a bill of rights. The powers of Congress are limited and enumerated. We say we have
given

given them those powers, but we do not say we have given them more. We retain all those rights which we have not given away to the general government. The gentleman is a professional man. If a gentleman had made his last will and testament, and devised or bequeathed to a particular person the sixth part of his property, or any particular specific legacy, could it be said that that person should have the whole estate? If they can assume powers not enumerated, there was no occasion for enumerating any powers. The gentleman is learned: Without recurring to his learning, he may only appeal to common sense, it will inform him, that if we had all power before, and give away but a part, we still retain the rest. It is as plain a thing as possibly can be, that Congress can have no power but what we expressly give them. There is an express clause, which, however disingenuously it has been perverted from its true meaning, clearly demonstrates that they are confined to those powers which are given them. This clause enables them to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or any department or officers thereof. This clause specifies that they shall make laws to carry into execution, *all the powers vested* by this Constitution, consequently they can make no laws to execute any other power. This clause gives no new power, but declares that those already given are to be executed by proper laws. I hope this will satisfy gentlemen.

Governor Johnston—Mr. Chairman, The learned member from Anson says, that the Federal Courts have exclusive jurisdiction of all cases in law and equity arising under the Constitution and the laws of the United States. The opinion which I have always entertained is, that they will in these cases, as well as in several others, have concurrent jurisdiction with the state Courts, and not exclusive jurisdiction. I see nothing in this Constitution which hinders a man from bringing suit wherever he thinks he can have justice done him. The jurisdiction of these courts is established for some purposes with which the state courts have nothing to do, and the Constitution takes no power from the state courts which they now have. They will have the same business which they have now, and if

so, they will have enough to employ their time. We know that the gentlemen who preside in our Superior Courts, have more business than they can determine. Their complicated jurisdiction, and the great extent of country, occasions them a vast deal of business. The addition of the business of the United States would be no manner of advantage to them. It is obvious to every one, that there ought to be one Supreme Court for national purposes. But the gentleman says that a bill of rights was necessary. It appears to me, Sir, that it would have been the highest absurdity to undertake to define what rights the people of the United States were entitled to: For that would be as much as to say, they were entitled to nothing else. A bill of rights may be necessary in a monarchical government, whose powers are undefined. Were we in the situation of a monarchical country? No, Sir. Every right could not be enumerated, and the omitted rights would be sacrificed, if security arose from an enumeration. The Congress cannot assume any other powers than those expressly given them, without a palpable violation of the Constitution. Such objections as this, I hope will have no effect on the minds of any Members in this House. When gentlemen object generally, that it tends to consolidate the states and destroy the state Judiciaries, they ought to be explicit, and explain their meaning. They make use of contradictory arguments. The Senate represents the states, and can alone prevent this dreaded consolidation: Yet the powers of the Senate are objected to. The rights of the people, in my opinion, cannot be affected by the Federal Courts. I do not know how inferior courts will be regulated. Some suppose the state courts will have this business. Others have imagined that the continent would be divided into a number of districts, where courts would be held so as to suit the convenience of the people. Whether this or some other mode will be appointed by Congress, I know not, but this I am sure of, that the state judiciaries are not divested of their present judicial cognizance, and that we have every security that our ease and convenience will be consulted. Unless Congress had this power, their laws could not be carried into execution.

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Mr. *Bloodworth*—Mr. Chairman, The worthy gentleman up last, has given me information on the subject, which I had never heard before. Hearing so many opinions, I did not know which was right. The honorable gentleman has said that the state courts and the Courts of the United States, would have concurrent jurisdiction. I beg the committee to reflect what would be the consequences of such measures. It has ever been considered that the trial by jury was one of the greatest rights of the people. I ask whether, if such causes go into the Federal Court, the trial by jury is not cut off, and whether there is any security that we shall have justice done us. I ask if there be any security that we shall have juries in civil causes. In criminal cases there are to be juries, but there is no provision made for having civil causes tried by jury. This concurrent jurisdiction is inconsistent with the security of that great right. If it be not, I would wish to hear how it is secured. I have listened with attention to what the learned gentlemen have said, and have endeavoured to see whether their arguments had any weight, but I found none in them. Many words have been spoken, and long time taken up, but with me they have gone in at one ear and out at the other. It would give me much pleasure to hear that the trial by jury was secured.

Mr. *J. M'Dowall*—Mr. Chairman, The objections to this part of the Constitution have not been answered to my satisfaction yet. We know that the trial by a jury of the vicinage, is one of the greatest securities for property. If causes are to be decided at such a great distance, the poor will be oppressed; in land affairs particularly, the wealthy suitor will prevail. A poor man, who has a just claim on a piece of land, has not substance to stand it. Can it be supposed that any man, of common circumstances, can stand the expence and trouble of going from Georgia to Philadelphia, there to have a suit tried? And can it be justly determined without the benefit of a trial by jury? These are things which have justly alarmed the people. What made the people revolt from Great-Britain? The trial by jury, that great safeguard of liberty, was taken away, and a stamp duty was laid upon them. This alarmed them, and led them to fear that greater oppressions would take place. We then resisted. It involved us in a war, and
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caused us to relinquish a government which made us happy in every thing else. The war was very bloody, but we got our independence. We are now giving away our dear bought rights. We ought to consider what we are about to do before we determine.

Mr. *Spaight*—Mr. Chairman, The trial by jury was not forgotten in the Convention; the subject took up a considerable time to investigate it. It was impossible to make any one uniform regulation for all the states, or that would include all cases where it would be necessary. It was impossible, by one expression, to embrace the whole. There are a number of equity and maritime cases in some of the states, in which jury trials are not used. Had the Convention said, that all causes should be tried by a jury, equity and maritime cases would have been included. It was therefore left to the Legislature to say in what cases it should be used; and as the trial by jury is in full force in the state courts, we have the fullest security.

Mr. *Iredell*—Mr. Chairman, I have waited a considerable time, in hopes that some other gentleman would fully discuss this point. I conceive it to be my duty to speak on every subject, whereon I think I can throw any light, and it appears to me that some things ought to be said which no gentleman has yet mentioned. The gentleman from New-Hanover said, that our arguments went in at one ear and out at the other. This sort of language, on so solemn and important an occasion, gives me pain. [Mr. *Bloodworth* here declared, that he did not mean to convey any disrespectful idea by such an expression—that he did not mean an absolute neglect of their arguments, but that they were not sufficient to convince him—that he should be sorry to give pain to any gentleman—that he had listened, and still would listen with attention to what would be said. Mr. *Iredell* then continued.] I am by no means surprised at the anxiety which is expressed by gentlemen on this subject. Of all the trials that ever were instituted in the world, this, in my opinion, is the best, and that which I hope will continue the longest. If the gentlemen who composed the Convention had designedly omitted it, no man would be more ready to condemn their conduct than myself. But I have been told, that the omission of it arose from the difficulty of establishing one uniform unexceptionable

ceptionable mode ; this mode of trial being different in many particulars in the several states. Gentlemen will be pleased to consider, that there is a material difference between an article fixed in the constitution, and a regulation by law. An article in the constitution, however inconvenient it may prove by experience, can only be altered by altering the Constitution itself, which manifestly is a thing that ought not to be done often. When regulated by law, it can easily be occasionally altered, so as best to suit the conveniences of the people. Had there been an article in the Constitution taking away that trial, it would justly have excited the public indignation. It is not taken away by the Constitution. Though that does not provide expressly for a trial by jury in civil cases, it does not say that there shall not be such a trial. The reasons of the omission have been mentioned by a Member of the late General Convention, [Mr. Spaight.] There are different practices in regard to this trial in different states. In some cases they have no juries in admiralty and equity cases ; in others they have juries in these cases, as well as in suits at common law. I beg leave to say, that if any gentleman of ability, and knowledge of the subject, will only endeavour to fix upon any one rule, that would be pleasing to all the states under the impression of their present different habits, he will be convinced that it is impracticable. If the practice of any particular state had been adopted, others probably, whose practice had been different, would have been discontented. This is a consequence that naturally would have ensued, had the provision been made in the Constitution itself. But when the regulation is to be by law, as that law when found injudicious can be easily repealed, a majority may be expected to agree upon some method, since some method or other must be first tried, and there is a greater chance of the favourite method of one state being in time preferred. It is not to be presumed, that the Congress would dare to deprive the people of this valuable privilege. Their own interest will operate as an additional guard, as none of them could tell how soon they might have occasion for such a trial themselves. The greatest danger from ambition is in criminal cases. But here they have no option. The trial must be by jury in the state wherein the offence is committed, and the writ

of *habeas corpus* will in the mean time secure the citizen against arbitrary imprisonment, which has been the principal source of tyranny in all ages.

As to the clause respecting cases arising under the Constitution and the laws of the union, which the honourable Member objected to, it must be observed, that laws are useless unless they are executed. At present Congress have powers which they cannot execute. After making laws which affect the dearest interests of the people, in the constitutional mode, they have no way of enforcing them. The situation of those gentlemen who have lately served in Congress must have been very disagreeable. Congress have power to enter into negotiations with foreign nations, but cannot compel the observance of treaties that they make. They have been much distressed by their inability to pay the pressing demands of the public creditors. They have been reduced so low as to borrow principal to pay interest. Such are the unfortunate consequences of this unhappy situation! These are the effects of the pernicious mode of requisitions. Has any state fully paid its quota? I believe not, Sir. Yet I am far from thinking that this has been owing altogether to an unwillingness to pay the debts. It may have been in some instances the case, but I believe not in all. Our state Legislature has no way of raising any considerable sum but by laying direct taxes. Other states have imports of consequence. These may afford them a considerable relief, but our state perhaps could not have raised its full quota by direct taxes, without imposing burthens too heavy for the people to bear. Suppose in this situation, Congress had proceeded to enforce their requisitions, by sending an army to collect them; what would have been the consequence? *Civil war*; in which the innocent must have suffered with the guilty. Those who were willing to pay, would have been equally distressed with those who were unwilling. Requisitions thus having failed of their purpose, it is proposed by this Constitution, that instead of collecting taxes by the sword, application shall be made by the government to the individual citizens. If any individual disobeys, the courts of justice can give immediate relief. This is the only natural and effectual method of enforcing laws. As to the danger of concurrent jurisdictions, has any inconvenience resulted from the concurrent

concurrent jurisdictions, in sundry cases, of the superior and county courts of this state? The inconvenience of attending at a great distance, which has been so much objected to, is one which would be so general, that there is no doubt but that a majority would always feel themselves and their constituents personally interested in preventing it. I have no doubt, therefore, that proper care will be taken to lessen this evil as much as possible, and in particular, that an appeal to the Supreme Court will not be allowed, but in cases of great importance, where the object may be adequate to the expence. The Supreme Court may possibly be directed to sit alternately in different parts of the union.

The propriety of having a Supreme Court in every government, must be obvious to every man of reflection. There can be no other way of securing the administration of justice uniformly in the several states. There might be otherwise as many different adjudications on the same subject, as there are states. It is to be hoped, that if this government be established, connexions still more intimate than the present, will subsist between the different states. The same measure of justice therefore, as to the objects of their common concern, ought to prevail in all. A man in North-Carolina for instance, if he owed £.100 here, and was compellable to pay it in good money, ought to have the means of recovering the same sum, if due to him, in Rhode-Island, and not merely the nominal sum, at about an eighth or tenth part of its intrinsic value. To obviate such a grievance as this, the Constitution has provided a tribunal to administer equal justice to all.

A gentleman has said, that the stamp-act, and the taking away of the trial by jury, were the principal causes of resistance to Great-Britain, and seemed to infer, that opposition would therefore be justified to this part of the system. The stamp-act was much earlier than the immediate cause of our independence. But what was the great ground of opposition to the stamp-act? Surely it was, because the act was not passed by our own Representatives, but by those of Great-Britain. Under this Constitution, taxes are to be imposed by our own Representatives in the General Congress. The fewness of their number will be compensated by the weight and importance of their characters.

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Our Representatives will be in proportion to those of the other states. This case is certainly not like that of taxation by a foreign Legislature. In respect to the trial by jury, its being taken away in certain cases, was to be sure one of the causes assigned in the declaration of independence. But that was done by a foreign Legislature, which might continue it so forever, and therefore jealousy was justly excited. But this Constitution has not taken it away, and it is left to the discretion of our own Legislature, to act in this respect, as their wisdom shall direct. In Great-Britain the people speak of the trial by jury with admiration. No Monarch or Minister, however arbitrary in his principles, would dare to attack that noble palladium of liberty. The enthusiasm of the people in its favour would in such a case produce general resistance. That trial remains unimpaired there, although they have a considerable standing army, and their Parliament has authority to abolish it if they please. But woe be to those who should attempt it! If it be secure in that country, under these circumstances, can we believe that Congress either would or could take it away in this? Were they to attempt it, their authority would be instantly resisted. They would draw down on themselves the resentment and detestation of the people. They and their families, so long as any remained in being, would be held in eternal infamy, and the attempt prove as unsuccessful as it was wicked.

With regard to a bill of rights, this is a notion originating in England, where no written Constitution is to be found, and the authority of their government is derived from the most remote antiquity. Magna Charta itself is no Constitution, but a solemn instrument ascertaining certain rights of individuals, by the Legislature for the time being, and every article of which the Legislature may at any time alter. This, and a bill of rights also, the invention of later times, were occasioned by great usurpations of the crown, contrary, as was conceived, to the principles of their government, about which there was a variety of opinions. But neither that instrument or any other instrument ever attempted to abridge the authority of Parliament, which is supposed to be without any limitation whatever. Had their Constitution been fixed and certain, a bill of rights would have been useless, for the
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Constitution would have shewn plainly the extent of that authority which they were disputing about. Of what use therefore can a bill of rights be in this Constitution, where the people expressly declare how much power they do give, and consequently retain all they do not ? It is a declaration of particular powers by the people to their Representatives for particular purposes. It may be considered as a great power of attorney, under which no power can be exercised but what is expressly given. Did any man ever hear before that at the end of a power of attorney it was said, that the Attorney should not exercise more power than was there given him ? Suppose for instance a man had lands in the counties of Anson and Caswell, and he should give another a power of attorney to sell his lands in Anson ; would the other have any authority to sell the lands in Caswell ? or could he without absurdity say, " 'Tis true you have not expressly authorised me to sell the lands in Caswell, but as you had lands there, and did not say I should not, I thought I might as well sell those lands as the other." A bill of rights, as I conceive, would not only be incongruous, but dangerous. No man, let his ingenuity be what it will, could enumerate all the individual rights not relinquished by this Constitution. Suppose therefore an enumeration of a great many, but an omission of some, and that long after all traces of our present disputes were at an end, any of the omitted rights should be invaded, and the invasion be complained of ; what would be the plausible answer of the government to such a complaint ? Would they not naturally say, " We live at a great distance from the time when this Constitution was established. We can judge of it much better by the ideas of it entertained at the time, than by any ideas of our own. The bill of rights passed at that time, shewed that the people did not think every power retained which was not given, else this bill of rights was not only useless, but absurd. But we are not at liberty to charge an absurdity upon our ancestors, who have given such strong proofs of their good sense, as well as their attachment to liberty. So long as the rights enumerated in the bill of rights remain unviolated, you have no reason to complain. This is not one of them." Thus a bill of rights might operate as a snare, rather than a protection. If we had

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formed a General Legislature, with undefined powers, a bill of rights would not only have been proper, but necessary ; and it would have then operated as an exception to the legislative authority in such particulars. It has this effect in respect to some of the American Constitutions, where the powers of legislation are general. But where they are powers of a particular nature, and expressly defined, as in the case of the Constitution before us, I think, for the reasons I have given, a bill of rights is not only unnecessary, but would be absurd and dangerous.

Mr. *J. M'Dowall*.—Mr. Chairman, The learned gentleman made use of several arguments to induce us to believe, that the trial by jury in civil cases was not in danger, and observed, that in criminal cases it is provided, that the trial is to be in the state where the crime was committed. Suppose a crime is committed at the Mississippi—the man may be tried at Edenton. They ought to be tried by the people of the vicinage ; for when the trial is at such an immense distance, the principal privilege attending the trial by jury is taken away : Therefore the trial ought to be limited to a district or certain part of the state. It has been said by the gentleman from Edenton, that our Representatives will have virtue and wisdom to regulate all these things. But it would give me much satisfaction, in a matter of this importance, to see it absolutely secured. The depravity of mankind militates against such a degree of confidence. I wish to see every thing fixed.

Governor *Johnston*.—Mr. Chairman, The observations of the gentleman last up, confirm what the other gentleman said. I mean, that as there are dissimilar modes with respect to the trial by jury in different states, there could be no general rule fixed to accommodate all. He says that this clause is defective, because the trial is not to be by a jury of the vicinage. Let us look at the state of Virginia, where, as long as I have known it, the laws have been executed so as to satisfy the inhabitants, and I believe as well as in any part of the union. In that country juries are summoned every day from the by-standers. We may expect less partiality, when the trial is by strangers ; and were I to be tried for my property or life, I would rather be tried by disinterested men, who were not biassed, than by men who were perhaps intimate friends of my opponent.

ponent. Our mode is different from theirs, but whether theirs be better than ours or not, is not the question. It would be improper for our Delegates to impose our mode upon them, or for theirs to impose their mode upon us. The trial will probably be in each state as it has been hitherto used in such state, or otherwise regulated as conveniently as possible for the people. The Delegates who are to meet in Congress will, I hope, be men of virtue and wisdom. If not, it will be our own fault. They will have it in their power to make necessary regulations to accommodate the inhabitants of each state. In the Constitution, the general principles only are laid down. It will be the object of the future legislation of Congress, to make such laws as will be most convenient for the people. With regard to a bill of rights so much spoken of, what the gentleman from Edenton has said, I hope will obviate the objections against the want of it. In a monarchy, all power may be supposed to be vested in the Monarch, except what may be reserved by a bill of rights. In England, in every instance where the rights of the people are not declared, the prerogative of the King is supposed to extend. But in this country we say, that what rights we do not give away remain with us.

Mr. *Bloodworth*—Mr. Chairman, The footing on which the trial by jury is in the Constitution, does not satisfy me. Perhaps I am mistaken, but if I understand the thing right, the trial by jury is taken away. If the Supreme Federal Court has jurisdiction both as to law and fact, it appears to me to be taken away. The honourable gentleman who was in the Convention, told us, that the clause, as it now stands, resulted from the difficulty of fixing the mode of trial. I think it was easy to have put it on a secure footing. But if the genius of the people of the United States is so dissimilar, that our liberties cannot be secured, we can never hang long together. Interest is the band of social union, and when this is taken away, the union itself must dissolve.

Mr. *Maclaine*—Mr. Chairman, I do not take the interests of the states to be so dissimilar; I take them to be all nearly alike, and inseparably connected. It is impossible to lay down any constitutional rule for the government of all the different states in each particular. But it will be
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easy for the Legislature to make laws to accommodate the people in every part of the union, as circumstances may arise. Jury trial is not taken away in such cases where it may be found necessary. Altho' the Supreme Court has cognizance of the appeal, it does not follow but that the trial by jury may be had in the court below, and the testimony transmitted to the Supreme Court, who will then finally determine on a review of all the circumstances. This is well known to be the practice in some of the states. In our own state indeed, when a cause is instituted in the county court, and afterwards there is an appeal upon it, a new trial is had in the superior court, as if no trial had been had before. In other countries however, when a trial is had in an inferior court, and an appeal is taken, no testimony can be given in the court above, but the court determines upon the circumstances appearing upon the record. If I am right, the plain inference is, that there may be a trial in the inferior courts, and that the record including the testimony may be sent to the Supreme Court. But if there is a necessity for a jury in the Supreme Court, it will be a very easy matter to empanel a jury at the bar of the Supreme Court, which may save great expence and be very convenient to the people. It is impossible to make every regulation at once. Congress, who are our own Representatives, will undoubtedly make such regulations as will suit the convenience and secure the liberty of the people.

Mr. *Iredell* declared it as his opinion, that there might be juries in the superior court as well as in the inferior courts, and that it was in the power of Congress to regulate it so.

Mr. President now resumed the Chair, and Mr. Ken-
nion reported, That the committee had, according to the order of the day, again had the proposed Constitution under consideration, and had made further progress therein, but not having time to go through the same, had desired him to move to the Convention for leave to sit again.

Resolved, That this Convention will to-morrow again dissolve itself into a committee of the whole House, to take into further consideration the proposed plan of government.

The Convention then adjourned until to-morrow morning, nine o'clock.

TUESDAY.

T U E S D A Y, J U L Y 29, 1788.

The Convention met according to adjournment, and resolved itself into a committee of the whole Convention, to take into further consideration the proposed plan of government.

Mr. Kennion in the Chair.

Mr. *Spencer*—Mr. Chairman, I hope to be excused for making some observations on what was said yesterday, by gentlemen in favour of these two clauses. The motion which was made that the committee should rise, precluded me from speaking then. The gentlemen have shewed much moderation and candour in conducting this business: But I still think that my observations are well founded, and that some amendments are necessary. The gentlemen said all matters not given up by this form of government, were retained by the respective states. I know that it ought to be so; it is the general doctrine, but it is necessary that it should be expressly declared in the Constitution, and not left to mere construction and opinion. I am authorised to say it was heretofore thought necessary. The Confederation says expressly, that all that was not given up by the United States, was retained by the respective states. If such a clause had been inserted in this Constitution, it would have superceded the necessity of a bill of rights. But that not being the case, it was necessary that a bill of rights, or something of that kind, should be a part of the Constitution. It was observed, that as the Constitution is to be a delegation of power from the several states to the United States, a bill of rights was unnecessary. But it will be noticed that this is a different case. The states do not act in their political capacities, but the government is proposed for individuals. The very caption of the Constitution shews that this is the case. The expression, "We the people of the United States," shews that this government is intended for individuals; there ought therefore to be a bill of rights. I am ready to acknowledge that the Congress ought to have the power of executing its laws. Heretofore, because all the laws of the Confederation were binding on the states in their political capacities, courts had nothing to do with them; but now the thing is entirely different. The laws of Congress will be binding on individuals, and those things

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which concern individuals will be brought properly before the courts. In the next place, all the officers are to take an oath to carry into execution this general government, and are bound to support every act of the government, of whatever nature it may be. This is a fourth reason for securing the rights of individuals. It was also observed, that the Federal Judiciary and the courts of the states under the federal authority, would have concurrent jurisdiction with respect to any subject that might arise under the Constitution. I am ready to say that I most heartily wish that whenever this government takes place, the two jurisdictions and the two governments, that is, the general and the several state governments, may go hand in hand, and that there may be no interference, but that every thing may be rightly conducted. But I will never concede that it is proper to divide the business between the two different courts. I have no doubt but there is wisdom enough in this state to decide the business in a proper manner, without the necessity of federal assistance to do our business. The worthy gentleman from Edenton, dwelt a considerable time on the observations on a bill of rights, contending that they were proper only in monarchies, which were founded on different principles from those of our government; and therefore, though they might be necessary for others, yet they were not necessary for us. I still think that a bill of rights is necessary. This necessity arises from the nature of human societies. When individuals enter into society, they give up some rights to secure the rest. There are certain human rights that ought not to be given up, and which ought in some manner to be secured. With respect to these great essential rights, no latitude ought to be left. They are the most inestimable gifts of the great Creator, and therefore ought not be destroyed, but ought to be secured. They ought to be secured to individuals in consideration of the other rights which they give up to support society.

The trial by jury has been also spoken of. Every person who is acquainted with the nature of liberty, need not be informed of the importance of this trial. Juries are called the bulwarks of our rights and liberty; and no country can ever be enslaved as long as those cases which affect their lives and property, are to be decided in a
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great measure, by the consent of twelve honest, disinterested men, taken from the respectable body of yeomanry. It is highly improper that any clause which regards the security of the trial by jury should be any way doubtful. In the clause that has been read, it is ascertained that criminal cases are to be tried by jury, in the states wherein they are committed. It has been objected to that clause, that it is not sufficiently explicit. I think that it is not. It was observed, that one may be taken at a great distance. One reason of the resistance to the British government was, because they required that we should be carried to the country of Great-Britain, to be tried by juries of that country. But we insisted on being tried by juries of the vicinage in our own country. I think it therefore proper, that something explicit should be said with respect to the vicinage.

With regard to that part that the Supreme Court shall have appellate jurisdiction both as to law and fact, it has been observed, that though the Federal Court might decide without a jury, yet the court below, which tried it, might have a jury. I ask the gentleman what benefit would be received in the suit by having a jury trial in the court below, when the verdict is set aside in the Supreme Court. It was intended by this clause that the trial by jury should be suppressed in the superior and inferior courts. It has been said in defence of the omission concerning the trial by jury in civil cases, that one general regulation could not be made—that in several cases the Constitution of several states did not require a trial by jury; for instance, in cases of equity and admiralty, whereas in others it did; and that therefore it was proper to leave this subject at large. I am sure that for the security of liberty they ought to have been at the pains of drawing some line. I think that the respectable body who formed the Constitution, should have gone so far as to put matters on such a footing as that there should be no danger. They might have provided that all those cases which are now triable by a jury, should be tried in each state by a jury, according to the mode usually practised in such state. This would have been easily done if they had been at the trouble of writing five or six lines. Had it been done, we should have been entitled to say that our rights and liberties were not endangered.

dangered. If we adopt this clause as it is, I think, notwithstanding what gentlemen have said, that there will be danger. There ought to be some amendments to it, to put this matter on a sure footing. There does not appear to me to be any kind of necessity that the Federal Court should have jurisdiction in the body of the country. I am ready to give up that in the cases expressly enumerated, an appellate jurisdiction, except in one or two instances, might be given. I wish them also to have jurisdiction in maritime affairs, and to try offences committed on the high seas. But in the body of a state, the jurisdiction of the courts in that state might extend to carry into execution the laws of Congress. It must be unnecessary for the Federal Courts to do it, and would create trouble and expence which might be avoided. In all cases where appeals are proper, I will agree that it is necessary there should be one Supreme Court. Were those things properly regulated, so that the Supreme Court might not be oppressive, I should have no objection to it.

Mr. *Davie*—Mr. Chairman, Yesterday and to-day I have given particular attention to the observations of the gentleman last up. I believe, however, that before we take into consideration these important clauses, it will be necessary to consider in what manner laws can be executed. For my own part, I know but two ways in which the laws can be executed by any government. If there be any other, it is unknown to me. The first mode is coercion by military force, and the second is coercion through the judiciary. With respect to coercion by force, I shall suppose that it is so extremely repugnant to the principles of justice and the feelings of a free people, that no man will support it. It must in the end terminate in the destruction of the liberty of the people. I take it, therefore, that there is no rational way of enforcing the laws but by the instrumentality of the Judiciary. From these premises we are left only to consider how far the jurisdiction of the Judiciary ought to extend. It appears to me that the Judiciary ought to be competent to the decision of any question arising out of the Constitution itself. On a review of the principles of all free governments, it seems to me also necessary that the judicial power should be co-extensive with the legislative. It is necessary in all governments,

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but particularly in a federal government, that its judiciary should be competent to the decision of all questions arising out of the Constitution. If I understand the gentleman right, his objection was not to the defined jurisdiction, but to the general jurisdiction, which is expressed thus, "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority," and also to the appellate jurisdiction in some instances. Every Member who has read the Constitution with attention, must observe that there are certain fundamental principles in it, both of a positive and negative nature, which, being intended for the general advantage of the community, ought not to be violated by any future legislation of the particular states. Every Member will agree that the positive regulations ought to be carried into execution, and that the negative restrictions ought not to be disregarded or violated. Without a Judiciary, the injunctions of the Constitution may be disobeyed, and the positive regulations neglected or contravened. There are certain prohibitory provisions in this Constitution, the wisdom and propriety of which must strike every reflecting mind, and certainly meet with the warmest approbation of every citizen of this state. It provides, "That no state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws—that no preference shall be given by any regulation of commerce or revenue, to the ports of one state over those of another—and that no state shall emit bills of credit—make any thing but gold and silver coin a tender in payments of debts—pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts." These restrictions ought to supercede the laws of particular states. With respect to the prohibitory provisions, that no duty or impost shall be laid by any particular state, which is so highly in favour of us and the other non-importing states, the importing states might make laws laying duties notwithstanding, and the Constitution might be violated with impunity, if there were no power in the general government to correct and counteract such laws. This great object can only be safely and completely

completely obtained by the instrumentality of the Federal Judiciary. Would not Virginia, who has raised many thousand pounds out of our citizens by her imposts, still avail herself of the same advantage if there were no constitutional power to counteract her regulations? If cases arising under the Constitution were left to her own courts, might she not still continue the same practices? But we are now to look for justice to the controuling power of the Judiciary of the United States. If the Virginians were to continue to oppress us by laying duties, we can be relieved by a recurrence to the general Judiciary. This restriction in the Constitution, is a fundamental principle which is not to be violated, but which would have been a dead letter were there no Judiciary constituted to enforce obedience to it. Paper money and private contracts were in the same condition. Without a general controuling Judiciary, laws might be made in particular states to enable its citizens to defraud the citizens of other states. Is it probable that if a citizen of South-Carolina owed a sum of money to a citizen of this state, that the latter would be certain of recovering the full value in their courts? That state might in future, as they have already done, make pine-barren acts to discharge their debts. They might say that our citizens should be paid in sterile inarable lands, at an extravagant price. They might pass the most iniquitous instalment laws, procrastinating the payment of debts due from their citizens, for years—nay, for ages. Is it probable that we should get justice from their own judiciary, who might consider themselves obliged to obey the laws of their own state? Where then are we to look for justice? To the Judiciary of the United States. Gentlemen must have observed the contracted and narrow minded regulations of the individual states, and their predominant disposition to advance the interests of their own citizens to the prejudice of others. Will not these evils be continued if there be no restraint? The people of the United States have one common interest—they are all members of the same community, and ought to have justice administered to them equally in every part of the continent, in the same manner, with the same dispatch, and on the same principles. It is therefore absolutely necessary that the Judiciary of the union, should have jurisdiction in all cases.

cases arising in law and equity under the Constitution. Surely there should be somewhere a constitutional authority for carrying into execution constitutional provisions, otherwise, as I have already said, they would be a dead letter.

With respect to their having jurisdiction of all cases arising under the laws of the United States, although I have a very high respect for the gentleman, I heard his objection to it with surprise. I thought, if there were any political axiom under the sun, it must be that the judicial power ought to be co-extensive with the legislative. The federal government ought to possess the means of carrying the laws into execution. This position will not be disputed. A government would be a *felo de se* to put the execution of its laws under the controul of any other body. If laws are not to be carried into execution by the interposition of the Judiciary, how is it to be done? I have already observed, that the mind of every honest man who has any feeling for the happiness of his country, must have the highest repugnance to the idea of military coercion. The only means then, of enforcing obedience to the legislative authority, must be through the medium of the officers of peace. Did the gentleman carry his objection to the extension of the judicial power to treaties? It is another principle which I imagine will not be controverted, that the general Judiciary ought to be competent to the decision of all questions which involve the general welfare or the peace of the union. It was necessary that treaties should operate as laws upon individuals. They ought to be binding upon us the moment they are made. They involve in their nature, not only our own rights but those of foreigners. If the rights of foreigners were left to be decided ultimately by thirteen distinct judiciaries, there would necessarily be unjust and contradictory decisions. If our courts of justice did not decide in favour of foreign citizens and subjects when they ought, it might involve the whole union in a war. There ought, therefore, to be a paramount tribunal, which should have ample power to carry them into effect. To the decision of all causes which might involve the peace of the union, may be referred also, that of controversies between the citizens or subjects of foreign states and the citizens of the
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United States. It has been laid down by all writers, that the denial of justice is one of the just causes of war. If these controversies were left to the decision of particular states, it would be in their power at any time, to involve the whole continent in a war, usually the greatest of all national calamities. It is certainly clear, that where the peace of the union is affected, the general Judiciary ought to decide. It has generally been given up, that all cases of admiralty and maritime jurisdiction should also be determined by them. It has been equally ceded by the strongest opposers to this government, that the Federal Courts should have cognizance of controversies between two or more states; between a state and the citizens of another state, and between the citizens of the same state claiming lands under the grant of different states. Its jurisdiction in these cases is necessary, to secure impartiality in decisions, and preserve tranquility among the states. It is impossible that there should be impartiality when a party affected is to be Judge.

The security of impartiality is the principal reason for giving up the ultimate decision of controversies between citizens of different states. It is essential to the interest of agriculture and commerce, that the hands of the states should be bound from making paper money, instalment laws, or *pine-barren acts*. By such iniquitous laws the merchant or farmer may be defrauded of a considerable part of his just claims. But in the federal court real money will be recovered with that speed which is necessary to accommodate the circumstances of individuals. The tedious delays of judicial proceedings at present in some states, are ruinous to creditors. In Virginia many suits are twenty or thirty years spun out by legal ingenuity, and the defective construction of their judiciary. A citizen of Massachusetts or this country might be ruined before he could recover a debt in that state. It is necessary therefore in order to obtain justice, that we recur to the Judiciary of the United States, where justice must be equally administered, and where a debt may be recovered from the citizen of one state as soon as from the citizen of another.

As to a bill of rights, which has been brought forward in a manner I cannot account for, it is unnecessary to say any thing. The learned gentleman has said, that by a con-
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current jurisdiction the laws of the United States must necessarily clash with the laws of the individual states, in consequence of which the laws of the states will be obstructed, and the state governments absorbed. This cannot be the case. There is not one instance of a power given to the United States, whereby the internal policy or administration of the states is affected. There is no instance that can be pointed out, wherein the internal policy of the state can be affected by the Judiciary of the United States. He mentioned impost laws. It has been given up on all hands, that if there was a necessity of a Federal Court, it was on this account. Money is difficult to be got into the treasury. The power of the Judiciary to enforce the federal laws is necessary to facilitate the collection of the public revenues. It is well known in this state, with what reluctance and backwardness Collectors pay up the public monies. We have been making laws after laws to remedy this evil and still find them ineffectual. Is it not therefore necessary to enable the general government to compel the delinquent receivers to be punctual? The honourable gentleman admits that the general government ought to legislate upon individuals instead of states. Its laws will otherwise be ineffectual, but particularly with respect to treaties. We have seen with what little ceremony the states violated the peace with Great-Britain. Congress had no power to enforce its observance. The same cause will produce the same effect. We need not flatter ourselves that similar violations will always meet with equal impunity. I think he must be of opinion upon more reflection, that the jurisdiction of the federal Judiciary could not have been constructed otherwise with safety or propriety. It is necessary that the Constitution should be carried into effect, that the laws should be executed, justice equally done to all the community, and treaties observed. These ends can only be accomplished by a general paramount Judiciary. These are my sentiments, and if the honourable gentleman will prove them erroneous, I shall readily adopt his opinions.

Mr. *MacLaine*—Mr. Chairman, I beg leave to make a few observations. One of the gentleman's objections to the Constitution now under consideration is, that it is not the act of the states but of the people; but that it ought

to be the act of the states, and he instances the delegation of power by the states to the Confederation at the commencement of the war as a proof of this position. I hope, Sir, that all power is in the people and not in the state governments. If he will not deny the authority of the people to delegate power to agents, and to devise such a government as a majority of them thinks will promote their happiness, he will withdraw his objection. The people, Sir, are the only proper authority to form a government. They, Sir, have formed their state governments, and can alter them at pleasure. Their transcendent power is competent to form this or any other government which they think promotive of their happiness. But the gentleman contends that there ought to be a bill of rights, or something of that kind—something declaring expressly, that all power not expressly given to the Constitution, ought to be retained by the states, and he produces the Confederation as an authority for its necessity. When the Confederation was made, we were by no means so well acquainted with the principles of government as we are now. We were then jealous of the power of our rulers, and had an idea of the British government when we entertained that jealousy. There is no people on earth so well acquainted with the nature of government as the people of America generally are. We know now, that it is agreed upon by most writers, and men of judgment and reflection, that all power is in the people and immediately derived from them. The gentleman surely must know, that if there be certain rights which never can nor ought to be given up; these rights cannot be said to be given away, merely because we have omitted to say that we have not given them up. Can any security arise from declaring that we have a right to what belongs to us? Where is the necessity of such a declaration? If we have this inherent, this unalienable, this indefeasible title to those rights, if they are not given up, are they not retained? If Congress should make a law beyond the powers and the spirit of the Constitution, should we not say to Congress, “ You have
 “ no authority to make this law. There are limits beyond
 “ which you cannot go. You cannot exceed the power
 “ prescribed by the Constitution. You are amenable to
 “ us

“ us for your conduct. This act is unconstitutional. We will disregard it, and punish you for the attempt.”

But the gentleman seems to be most tenacious of the judicial power of the states. The honourable gentleman must know, that the doctrine of reservation of power not relinquished, clearly demonstrates that the judicial power of the states is not impaired. He asks, with respect to the trial by jury, when the cause has gone up to the Superior Court, and the verdict is set aside, what benefit arises from having had a jury trial in the Inferior Court? I would ask the gentleman, what is the reason, that on a special verdict or case agreed, the decision is left to the court? There are a number of cases where juries cannot decide. When a jury finds the fact specially, or when it is agreed upon by the parties, the decision is referred to the court. If the law be against the party, the court decides against him; if the law be for him, the court judges accordingly. He as well as every gentleman here must know, that under the Confederation Congress set aside juries. There was an appeal given to Congress, did Congress determine by a jury? Every party carried his testimony in writing to the Judges of Appeal, and Congress determined upon it.

The distinction between matters of law and of fact, has not been sufficiently understood, or has been intentionally misrepresented. On a demurrer in law, in which the facts are agreed upon by the parties, the law arising thereupon is referred to the court. An inferior court may give an erroneous judgment; an appeal may be had from this court to the Supreme Federal Court, and a right decision had. This is an instance wherein it can have cognizance of matter of law solely. In cases where the existence of facts has been first disputed by one of the parties, and afterwards established as in a special verdict, the consideration of these facts, blended with the law, is left to the court. In such cases Inferior Courts may decide contrary to justice and law, and appeals may be had to the Supreme Court. This is an instance wherein it may be said they have jurisdiction both as to law and fact. But where facts only are disputed, and where they are once established by a verdict, the opinion of the judges of the Supreme Court cannot.

cannot, I conceive, set aside these facts, for I do not think they have power so to do by this construction.

The Federal Court has jurisdiction only in some instances. There are many instances in which no court but the state courts can have any jurisdiction whatsoever, except where parties claim land under the grant of different states, or the subject of dispute arises under the Constitution itself. The state courts have exclusive jurisdiction over every other possible controversy that can arise between the inhabitants of their own states; nor can the Federal Courts intermeddle with such disputes either originally or by appeal. There is a number of other instances where though jurisdiction is given to the Federal Courts, it is not taken away from the state courts. If a man in South-Carolina owes me money, I can bring suit in the courts of that state, as well as in any inferior Federal Court. I think gentlemen cannot but see the propriety of leaving to the general government the regulation of the inferior federal tribunals. This is a power which our own state Legislature has. We may trust Congress as well as them.

Mr. *Spencer* answered, That the gentleman last up had misunderstood him. He did not object to the caption of the Constitution, but he instanced it to shew that the United States were not, merely as states, the objects of the Constitution; but that the laws of Congress were to operate upon individuals and not upon states. He then continued—I do not mean to contend, that the laws of the general government should not operate upon individuals. I before observed that this was necessary, as laws could not be put in execution against states, without the agency of the sword, which instead of answering the ends of government would destroy it. —I endeavoured to shew, that as the government was not to operate against states but against individuals, the rights of individuals ought to be properly secured. In order to constitute this security, it appears to me there ought to be such a clause in the Constitution as there was in the Confederation, expressly declaring, that every power, jurisdiction and right, which are not given up by it, remain in the states. Such a clause would render a bill of rights unnecessary. But as there is no such clause I contend, that there should be a bill of rights, ascertaining and securing the great rights of the states

states and people. Besides my objection to the revision of facts by the Federal Court, and the insecurity of jury trial, I consider the concurrent jurisdiction of those courts with the state courts, as extremely dangerous. It must be obvious to every one, that if they have such a concurrent jurisdiction, they must in time take away the business from the state courts entirely. I do not deny the propriety of having Federal Courts; but they should be confined to federal business, and ought not to interfere in those cases where the state courts are fully competent to decide. The state courts can do their business without federal assistance. I do not know how far any gentleman may suppose, that I may from my office be biased in favour of the state jurisdiction. I am no more interested than any other individual. I do not think it will affect the respectable office which I hold. Those courts will not take place immediately, and even when they do, it will be a long time before their concurrent jurisdiction will materially affect the state judiciaries—I therefore consider myself as disinterested. I only wish to have the government so constructed as to promote the happiness, harmony and liberty of every individual at home, and render us respectable as a nation abroad. I wish the question to be decided coolly and calmly, with moderation, candour and deliberation.

Mr. *Maclaine* replied, That the gentleman's objections to the want of a bill of rights, had been sufficiently answered. That the federal jurisdiction was well guarded, and that the Federal Courts had not, in his opinion, cognizance in any one case where it could be alone vested in the state judiciaries with propriety or safety. The gentleman, he said, had acknowledged that the laws of the union could not be executed under the existing government, and yet he objected to the Federal Judiciary's having cognizance of such laws, though it was the only probable means whereby they could be enforced. The treaty of peace with Great-Britain was the supreme law of the land, yet it was disregarded for want of a Federal Judiciary. The state judiciaries did not enforce an observance of it. The state courts were highly improper to be entrusted with the execution of the federal laws, as they were bound to judge according to the state laws, which might be repugnant to those of the union.

Mr.

Mr. Iredell—Mr. Chairman, I beg leave to make a few observations on some remarks that have been made on this part of the Constitution. The honourable gentleman said that it was very extraordinary that the Convention should not have taken the trouble to make an addition of five or six lines, to secure the trial by jury in civil cases. Sir, if by the addition, not only of five or six lines, but of five or six hundred lines, this invaluable object could have been secured, I should have thought the Convention criminal in omitting it; and instead of meriting the thanks of their country, as I think they do now, they might justly have met with its resentment and indignation. I am persuaded that the omission arose from the real difficulty of the case. The gentleman says that a mode might have been provided, whereby the trial by jury might have been secured satisfactorily to all the states. I call on him to shew that mode—I know of none—nor do I think it possible for any man to devise one to which some states would not have objected. It is said indeed, that it might have been provided that it should be as it had been heretofore. Had this been the case, surely it would have been highly incongruous.—The trial by jury is different in different states. It is regulated in one way in the state of North-Carolina, and in another way in the state of Virginia. It is established in a different way from either in several other states. Had it then been inserted in the Constitution, that the trial by jury should be as it had been heretofore, there would have been an example, for the first time in the world, of a Judiciary belonging to the same government being different in different parts of the same country. What would you think of an act of Assembly which should require the trial by jury to be had in one mode in the county of Orange, in another mode in Granville, and in a manner different from both in Chatham? Such an act of Assembly, so manifestly injudicious, impolitic and unjust, would be repealed next year. But what would you say of our Constitution, if it authorised such an absurdity? The mischief then could not be removed without altering the Constitution itself. It must be evident therefore, that the addition contended for would not have answered the purpose. If the method of any particular state had been established, it

would

would have been objected to by others, because whatever inconveniences it might have been attended with, nothing but a change in the Constitution itself could have removed them ; whereas, as it is now, if any mode established by Congress is found inconvenient, it can easily be altered by a single act of legislation. Let any gentleman consider the difficulties in which the Convention was placed. An union was absolutely necessary. Every thing could be agreed upon except the regulation of the trial by jury in civil cases. They were all anxious to establish it on the best footing, but found they could fix upon no permanent rule that was not liable to great objections and difficulties. If they could not agree among themselves, they had still less reason to believe that all the states would have unanimously agreed to any one plan that could be proposed. They therefore thought it better to leave all such regulations to the Legislature itself, conceiving there could be no real danger in this case from a body composed of our own Representatives, who could have no temptation to undermine this excellent mode of trial in civil cases, and who would have indeed a personal interest in common with others, in making the administration of justice between man and man secure and easy. In criminal cases, however, no latitude ought to be allowed. In these the greatest danger from any government subsists, and accordingly it is provided, that there shall be a trial by jury in all such cases in the state wherein the offence is committed. I thought the objection against the want of a bill of rights had been obviated unanswerably. It appears to me most extraordinary. Shall we give up any thing but what is positively granted by that instrument ? It would be the greatest absurdity for any man to pretend, that when a Legislature is formed for a particular purpose, it can have any authority but what is so expressly given to it, any more than a man acting under a power of attorney could depart from the authority it conveyed to him, according to an instance which I stated when speaking on the subject before. As for example—If I had three tracts of land, one in Orange, another in Caswell, and another in Chatham, and I gave a power of attorney to a man to sell the two tracts in Orange and Caswell, and he should attempt to sell my land in Chatham, would any man of common sense suppose he had

had authority to do so ? In like manner, I say, the future Congress can have no right to exercise any power but what is contained in that paper. Negative words, in my opinion, could make the matter no plainer than it was before. The gentleman says that unalienable rights ought not to be given up. Those rights which are unalienable are not alienated. They still remain with the great body of the people. If any right be given up that ought not to be, let it be shewn. Say it is a thing which affects your country, and that it ought not to be surrendered—this would be reasonable. But when it is evident that the exercise of any power not given up would be an usurpation, it would be not only useless but dangerous to enumerate a number of rights which are not intended to be given up; because it would be implying in the strongest manner, that every right not included in the exception might be impaired by the government without usurpation, and it would be impossible to enumerate every one. Let any one make what collection or enumeration of rights he pleases, I will immediately mention twenty or thirty more rights not contained in it.

Mr. Bloodworth—Mr. Chairman, I have listened with attention to the gentleman's arguments, but, whether it be for want of sufficient attention, or from the grossness of my ideas, I cannot be satisfied with his defence of the omission with respect to the trial by jury. He says that it would be impossible to fall on any satisfactory mode of regulating the trial by jury, because there are various customs relative to it in the different states. Is this a satisfactory cause for the omission ? Why did it not provide that the trial by jury should be preserved in civil cases ? It has said that the trial should be by jury in criminal cases, and yet this trial is different in its manner in criminal cases in the different states. If it has been possible to secure it in criminal cases, notwithstanding the diversity concerning it, why has it not been possible to secure it in civil cases ? I wish this to be cleared up. By its not being provided for, it is expressly provided against. I still see the necessity of a bill of rights. Gentlemen use contradictory arguments on this subject, if I recollect right. Without the most express restrictions, Congress may trample on your rights. Every possible precaution should be
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taken when we grant powers. Rulers are always disposed to abuse them. I beg leave to call gentlemens recollection to what happened under our Confederation. By it nine states are required to make a treaty, yet seven states said that they could, with propriety, repeal part of the instructions given our secretary for foreign affairs, which prohibited him from making a treaty to give up the Mississippi to Spain, by which repeal the rest of his instructions enabled him to make such treaty : Seven states actually did repeal the prohibitory part of these instructions, and they insisted it was legal and proper. This was in fact a violation of the Confederation. If gentlemen thus put what construction they please upon words, how shall we be redressed if Congress shall say that all that is not expressed is given up, and they assume a power which is expressly inconsistent with the rights of mankind. Where is the power to pretend to deny its legality ? This has occurred to me, and I wish it to be explained.

Mr. *Spencer*—Mr. Chairman, The gentleman expresses admiration as to what we object with respect to a bill of rights, and insists that what is not given up in the Constitution, is retained. He must recollect I said yesterday, that we could not guard with too much care, those essential rights and liberties which ought never to be given up. There is no express negative—no fence against their being trampled upon. They might exceed the proper boundary without being taken notice of. When there is no rule but a vague doctrine, they might make great strides and get into possession of so much power, that a general insurrection of the people would be necessary to bring an alteration about. But if a boundary were set up, when the boundary is passed, the people would take notice of it immediately. These are the observations which I made, and I have no doubt that when he coolly reflects, he will acknowledge the necessity of it. I acknowledge, however, that the doctrine is right. But if that Constitution is not satisfactory to the people, I would have a bill of rights, or something of that kind, to satisfy them.

Mr. *Locke*—Mr. Chairman, I wish to throw some particular light upon the subject according to my conceptions. I think the Constitution neither safe nor beneficial, as it grants powers unbounded, without restrictions. One

gentleman has said, that it was necessary to give cognizance of causes to the Federal Court, because there was partiality in the Judges of the states; that the state Judges could not be depended upon in causes arising under the Constitution and laws of the union. I agree that impartiality in Judges is indispensable. But I think this alteration will not produce more impartiality than there is now in our courts, whatever evils it may bring forth. Must there not be Judges in the Federal Courts—and those Judges taken from some of the states? The same partiality therefore may be in them. For my part I think it derogatory to the honour of this state to give this jurisdiction to the Federal Courts. It must be supposed that the same passions, dispositions, and failings of humanity which attend the state Judges, will be equally the lot of the Federal Judges. To justify giving this cognizance to those courts, it must be supposed that all justice and equity are given up at once in the states. Such reasoning is very strange to me. I fear greatly for this state and other states. I find there has a considerable stress been laid upon the injustice of laws made heretofore. Great reflections are thrown on South-Carolina for passing *pine-barren* and *instalment laws*, and on this state for making paper money. I wish those gentlemen who made those observations, would consider the necessity which compelled us in a great measure to make such money. I never thought the law which authorised it, a good law. If the evil could have been avoided, it would have been a very bad law. But necessity, Sir, justified it in some degree. I believe I have gained as little by it as any in this house. If we are to judge of the future by what we have seen, we shall find as much or more injustice in Congress than in our Legislature. Necessity compelled them to pass the law in order to save vast numbers of people from ruin. I hope to be excused in observing, that it would have been hard for our late continental army to lay down their arms, with which they had valiantly and successfully fought for their country, without receiving or being promised and assured of some compensation for their past services. What a situation would this country have been in, if they had had the power over the *purse and sword*? If they had had the powers given up by this Constitution, what a wretched situation

situation would this country have been in? Congress was unable to pay them, but passed many resolutions and laws in their favour, particularly one, that each state should make up the depreciation of the pay of the continental line, who were distressed for the want of an adequate compensation for their services. This state could not pay her proportion in specie. To have laid a tax for that purpose, would have been oppressive. What was to be done? The only expedient was to pass a law to make paper money, and make it a tender. The continental line was satisfied, and approved of the measure; it being done at their instance in some degree. Notwithstanding it was supposed to be highly beneficial to the state, it is found to be injurious to it. Saving expence is a very great object, but this incurred much expence. This subject has for many years embroiled the state. But the situation of the country is such, and the distresses of the people so great, that the public measures must be accommodated to their circumstances with peculiar delicacy and caution, or another insurrection may be the consequence. As to what the gentleman said of the trial by jury—it surprises me much to hear gentlemen of such great abilities, speak such language. It is clearly insecure, nor can ingenuity and subtle arguments prove the contrary. I trust this country is too sensible of the value of liberty, and her citizens have bought it too dearly to give it up hastily.

Mr. Iredell—Mr. Chairman, I hope that some other gentleman will answer what has been said by the gentlemen who have spoken last. I only rise to answer the question of the Member from New-Hanover, which was, If there was such a difficulty in establishing the trial by jury in civil cases, that the Convention could not concur in any mode, why the difficulty did not extend to criminal cases? I beg leave to say, that the difficulty in this case does not depend so much on the mode of proceeding, as on the difference of the subjects of controversy, and the laws relative to them. In some states there are no juries in admiralty and equity cases. In other states there are juries in such cases. In some states there are no distinct courts of equity, though in most states there are. I believe, that if an uniform rule had been fixed by the Constitution, it would have displeased some states so far
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that they would have rejected the Constitution altogether. Had it been declared generally, as the gentleman mentioned, it would have included equity and maritime cases, and created a necessity of deciding them in a manner different from that in which they have been decided heretofore in many of the states; which would very probably have met with the disapprobation of those states. We have been told, and I believe this was the real reason why they could not concur in any general rule. I have great respect for the characters of those gentlemen who formed the Convention, and I believe they were not capable of overlooking the importance of the trial by jury, much less of designedly plotting against it. But I fully believe that the real difficulty of the thing was the cause of the omission. I trust sufficient reasons have been offered, to shew that it is in no danger. As to criminal cases, I must observe, that the great instrument of arbitrary power is criminal prosecutions. By the privilege of the *habeas corpus* no man can be confined without enquiry, and if it should appear he has been committed contrary to law, he must be discharged. That diversity which is to be found in civil controversies, does not subsist in criminal cases. That diversity which contributes to the security of property in civil cases, would have pernicious effects in criminal ones. There is no other safe mode to try these but by a jury. If any man had the means of trying another his own way; or were it left to the controul of arbitrary Judges, no man would have that security for life and liberty which every freeman ought to have. I presume that in no state on the continent is a man tried on a criminal accusation but by a jury. It was necessary therefore that it should be fixed in the Constitution, that the trial should be by jury in criminal cases, and such difficulties did not occur in this as in the other case. The worthy gentleman says, that by not being provided for in civil cases it is expressly provided against, and that what is not expressed is given up. Were it so, no man would be more against this Constitution than myself. I should detest and oppose it as much as any man. But, Sir, this cannot be the case. I beg leave to say that that construction appears to me absurd and unnatural. As it could not be fixed either on the principles of uniformity or diversity, it must be left to Congress to modify it.

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If they establish it in any manner by law, and find it inconvenient, they can alter it. But I am convinced that a majority of the Representatives of the people, will never attempt to establish a mode oppressive to their constituents, as it will be their own interest to take care of this right. But it is observed that there ought to be a fence provided against future encroachments of power. If there be not such a fence it is a cause of objection. I readily agree there ought to be such a *fence*. The instrument ought to contain such a definition of authority as would leave no doubt, and if there be any ambiguity it ought not to be admitted. He says this construction is not agreeable to the people, though he acknowledges it is a right one. In my opinion there is no man of any reason at all, but must be satisfied with so clear and plain a definition. If the Congress should claim any power not given them, it would be as bare an usurpation as making a King in America. If this Constitution be adopted, it must be presumed the instrument will be in the hands of every man in America, to see whether authority be usurped; and any person by inspecting it may see if the power claimed be enumerated. If it be not, he will know it to be an usurpation.

Mr. *Maclaine*—Mr. Chairman, A gentlemen lately up, [Mr. Locke] has informed us of his doubts and fears respecting the Federal Courts. He is afraid for this state and other states. He supposes that the idea of giving cognizance of the laws of the union to Federal Courts, must have arisen from suspicions of partiality and want of common integrity in our state Judges. The worthy gentleman is mistaken in his construction of what I said. I did not personally reflect on the members of our state judiciary. Nor did I impute the impropriety of vesting the state judiciaries with exclusive jurisdiction over the laws of the union, and cases arising under the Constitution, to any want of probity in the Judges. But if they be Judges of the local or state laws, and receive emoluments for acting in that capacity, they will be improper persons to judge of the laws of the union. A federal Judge ought to be solely governed by the laws of the United States, and receive his salary from the treasury of the United States. It is impossible for any Judges, receiving pay from a single state, to be impartial in cases where the local laws or interests

ests of that state clash with the laws of the union, or the general interests of America. We have instances here which prove this partiality in such cases. It is also so in other states. The gentleman has thrown out something very uncommon. He likens the powers given by this Constitution to giving the late army the purse and the sword. I am much astonished that such an idea should be thrown out by that gentlemen, because his respectability is well known. If he considers but a moment, he must see that his observation is bad, and that the comparison is extremely absurd and improper. The purse and the sword must be given to every government. The sword is given to the Executive Magistrate; but the purse remains by this Constitution in the Representatives of the people. We know very well that they cannot raise one shilling but by the consent of the Representatives of the people. Money bills do not even originate in the Senate; they originate solely in the other house. Every appropriation must be by law. We know therefore that no Executive Magistrate or officer, can appropriate a shilling but as he is authorised by law. With respect to paper money, the gentleman has acted and spoken with great candour. He was against paper money from the first emission. There was no other way to satisfy the late army but by paper money, there being not a shilling of specie in the state. There were other modes adopted by other states, which did not produce such inconveniences. There was however a considerable majority of that Assembly who adopted the idea, that not one shilling more, paper money, should be made, because of the evil consequences that must necessarily follow. The experience of this country for many years has proved that such emissions involve us in debts and distresses, destroy our credit and produce no good consequence; yet contrary to all good policy the evil was repeated.

With respect to our public security and paper money, the apprehensions of gentlemen are groundless. I believe this Constitution cannot affect them at all. In the 10th section of the first article, it is provided among other restrictions, "that no state shall emit bills of credit, make any thing but gold or silver coin a tender in payment of debts, or pass any law impairing the obligation of contracts." Now, Sir, this has no retrospective view. It

looks

looks to futurity.—It is conceived by many people, that the moment this new Constitution is adopted, our present paper money will sink to nothing. For my part, I believe that instead of sinking it will appreciate. If we adopt, it will rise in value, so that twenty shillings of it will be equal to two Spanish milled dollars and an half. Paper money is as good as gold and silver where there are proper funds to redeem it, and no danger of its being encreased. Before the late war our paper money fluctuated in value. Thirty-six years ago, when I came into the country, our paper money was at seven shillings to the dollar. A few years before the late war, the merchants of Great-Britain remonstrated to the Ministry of that country, that they lost much of their debts by paper money losing its value. This caused an order to be made through all the states not to pass any money bills whatever. The effect of this was that our money appreciated. At the commencement of the war, our paper money in circulation was equal to gold or silver. But it is said that on adoption, all debts contracted heretofore, must then be paid in gold or silver coin. I believe that if any gentleman will attend to the clause above recited, he will find that it has no retrospective but a prospective view. It does not look back but forward. It does not destroy the paper money which is now actually made, but prevents us from making any more. This is much in our favour, because we may pay in the money we contracted for (or such as is equal in value to it) and the very restriction against an increase of it will add to its value. It is in the power of the Legislature to establish a scale of depreciation to fix the value of it: There is nothing against this in the Constitution; on the contrary it favours it. I should be much injured if it was really to be the case that the paper money should sink. After the Constitution was adopted, I should think myself, as a holder of our paper money, possessed of continental security. I am convinced our money will be good money, and if I was to speculate in any thing, I would in paper money, though I never did speculate. I should be satisfied that I should make a profit. Why say that the state security will be paid in gold and silver after all these things are considered? Every real, actual debt of the state,

state, ought to be discharged in real, and not nominal value, whether the Constitution be adopted or not.

Mr. *Bast* took a general view of the original and appellate jurisdiction of the Federal Court. He considered the Constitution neither necessary nor proper. He declared that the last part of the first paragraph of the second section, appeared to him totally inexplicable. He feared that dreadful oppression would be committed by carrying people too great a distance to decide trivial causes. He observed that gentlemen of the law and men of learning did not concur in the explanation or meaning of this Constitution. For his part, he said, he could not understand it, although he took great pains to find out its meaning, and although he flattered himself with the possession of common sense and reason. He always thought that there ought to be a compact between the governors and governed: Some called this a compact, others said it was not. From the contrariety of opinions, he thought the thing was either uncommonly difficult, or absolutely unintelligible. He wished to reflect on no gentleman, and apologized for his ignorance, by observing that he never went to school, and had been born blind; but he wished for information, and supposed that every gentleman would consider his desire as laudable.

Mr. *Maclaine* first, and then Mr. *Iredell*, endeavoured to satisfy the gentleman by a particular explanation of the whole paragraph. It was observed, that if there should be a controversy between this state and the Kings of France or Spain, it must be decided in the Federal Court. Or if there should arise a controversy between the French King or any other foreign power, or one of their subjects or citizens, and one of our citizens, it must be decided there also. The distinction between the words *citizen* and *subject* was explained—that the former related to individuals of popular governments; the latter to those of monarchies. As for instance, a dispute between this state or a citizen of it, and a person in Holland. The word foreign citizen would properly refer to such person. If the dispute was between this state and a person in France or Spain, the word foreign subject would apply to this—and all such controversies might be decided in the Federal Court—That the words *citizens* or *subjects* in that part of the clause, could only apply to foreign
citizens

citizens or foreign subjects, and another part of the Constitution made this plain, by confining disputes in general between citizens of the same state, to the single case of their claiming lands under grants of different states.

The last clause of the second section under consideration.

Mr. *Maclaine*—Mr. Chairman, An objection was made yesterday by a gentleman against this clause, because it confined the trial to the state; and he observed, that a person on the Mississippi might be tried in Edenton. Gentlemen ought to consider that it was impossible for the Convention, when devising a general rule for all the states, to descend to particular districts. The trial by jury is secured generally, by providing that the trial shall be in the state where the crime was committed. It is left to Congress to make such regulations by law, as will suit the circumstances of each state. It would have been impolitic to fix the mode of proceeding, because it would alter the present mode of proceeding in such cases, in this state or in several others. For there is such a dissimilarity in the proceedings of different states, that it would be impossible to make a general law which would be satisfactory to the whole. But as the trial is to be in the state, there is no doubt but it will be in the usual and common mode practised in the state.

Third section read without any observation.

Article fourth. The first section, and two first clauses of the second section, read without any observation.

The last clause read.

Mr. *Iredell* begged leave to explain the reason of this clause. In some of the northern states they have emancipated all their slaves. If any of our slaves, said he, go there and remain there a certain time, they would by the present laws, be entitled to their freedom; so that their masters could not get them again. This would be extremely prejudicial to the inhabitants of the southern states, and to prevent it, this clause is inserted in the Constitution. — Though the word *slave* be not mentioned, this is the meaning of it. The northern Delegates, owing to their particular scruples on the subject of slavery, did not choose the word *slave* to be mentioned.

The rest of the fourth article read without any observation.

Article fifth.

Mr. *Iredell*--Mr. Chairman, This is a very important clause. In every other constitution of government that I have ever heard or read of, no provision is made for necessary amendments. The misfortune attending most constitutions which have been deliberately formed, has been, that those who formed them thought their wisdom equal to all possible contingencies, and that there could be no error in what they did. The gentlemen who framed this Constitution thought with much more diffidence of their own capacities; and undoubtedly without a provision for amendment it would have been more justly liable to objection, and the characters of its framers would have appeared much less meritorious. This indeed is one of the greatest beauties of the system, and should strongly recommend it to every candid mind. The Constitution of any government which can not be regularly amended when its defects are experienced reduces the people to this dilemma—they must either submit to its oppressions, or bring about amendments more or less by a civil war. Happy this, the country we live in! The Constitution before us, if it be adopted, can be altered with as much regularity and as little confusion, as any act of Assembly—not indeed quite so easily, which would be extremely impolitic; but it is a most happy circumstance, that there is a remedy in the system itself for its own fallibility, so that alterations can without difficulty be made agreeable to the general sense of the people. Let us attend to the manner in which amendments may be made: The proposition for amendments may arise from Congress itself, when two-thirds of both Houses shall deem it necessary. If they should not, and yet amendments be generally wished for by the people, two-thirds of the Legislatures of the different states may require a general Convention for the purpose, in which case Congress are under the necessity of convening one. Any amendments which either Congress shall propose, or which shall be proposed by such General Convention, are afterwards to be submitted to the Legislatures of the different states, or Conventions called for that purpose, as Congress shall think proper; and upon the ratification of three-fourths of the states, will become a part of the Constitution. By refer-

ring this business to the Legislatures, expence would be saved; and in general it may be presumed, they would speak the genuine sense of the people. It may, however, on some occasions, be better to consult an immediate delegation for that special purpose. This is therefore left discretionary. It is highly probable that amendments agreed to in either of these methods, would be conducive to the public welfare, when so large a majority of the states consented to them. And in one of these modes, amendments that are now wished for, may in a short time be made to this Constitution by the states adopting it.

It is however to be observed, that the first and fourth clauses in the ninth section of the first article, are protected from any alteration till the year 1808. And in order that no consolidation should take place, it is provided, that no state shall, by any amendment or alteration, be ever deprived of an equal suffrage in the Senate without its own consent. The two first prohibitions are with respect to the census, according to which direct taxes are imposed, and with respect to the importation of slaves. As to the first, it must be observed, that there is a material difference between the northern and southern states. The northern states have been much longer settled, and are much fuller of people than the southern, but have not land in equal proportion nor scarcely any slaves. The subject of this article was regulated with great difficulty, and by a spirit of concession which it would not be prudent to disturb for a good many years. In twenty years there will probably be a great alteration, and then the subject may be reconsidered with less difficulty, and greater coolness. In the mean time the compromise was upon the best footing that could be obtained. A compromise likewise took place in regard to the importation of slaves. It is probable that all the members reprobated this inhuman traffic, but those of South-Carolina and Georgia would not consent to an immediate prohibition of it; one reason of which was, that during the last war they lost a vast number of negroes, which loss they wish to supply. In the mean time it is left to the states to admit or prohibit the importation, and Congress may impose a limited duty upon it.

Mr. *Bass* observed, that it was plain, that the introduction of amendments depended altogether on Congress.

Mr. *Iredell* replied, that it was very evident that it did not depend on the will of Congress: For that the Legislatures of three-fourths of the states were authorized to make application for calling a Convention to propose amendments, and on such application, it is provided that Congress *shall* call such Convention, so that they will have no option.

Article sixth. First clause read without any observation. Second clause read.

Mr. *Iredell*—This clause is supposed to give too much power, when in fact it only provides for the execution of those powers which are already given in the foregoing articles. What does it say? That “this Constitution, and
“the laws of the United States which shall be made in
“pursuance thereof, and all treaties made or which shall
“be made under the authority of the United States, shall
“be the supreme law of the land; and the Judges in every
“state shall be bound thereby, any thing in the constitution of laws of any state to the contrary notwithstanding.” What is the meaning of this, but that as we have given power we will support the execution of it? We should act like children to give power and deny the legality of executing it. It is saying no more than that when we adopt the government we will maintain and obey it; in the same manner as if the Constitution of this state had said, that when a law is passed in conformity to it we must obey that law. Would this be objected to? Then when the Congress passes a law consistent with the Constitution, it is to be binding on the people. If Congress under pretence of executing one power, should in fact usurp another, they will violate the Constitution. I presume therefore that this explanation, which appears to me the plainest in the world, will be entirely satisfactory to the committee.

Mr. *Bloodworth*—Mr. Chairman, I confess his explanation is not satisfactory to me—I wish the gentleman had gone further. I readily agree, that it is giving them no more power than to execute their laws. But how far does this go? It appears to me to sweep off all the Constitutions of the states. It is a total repeal of every act and

and Constitution of the states. The Judges are sworn to uphold it. It will produce an abolition of the state governments. Its sovereignty absolutely annihilates them.

Mr. *Iredell*.—Mr. Chairman, Every power delegated to Congress, is to be executed by laws made for that purpose. It is necessary to particularise the powers intended to be given in the Constitution, as having no existence before. But after having enumerated what we give up, it follows of course, that whatever is done by virtue of that authority, is legal without any new authority or power. The question then under this clause, will always be—whether Congress has exceeded its authority? If it has not exceeded it we must obey, otherwise not. This Constitution when adopted will become a part of our state Constitution, and the latter must yield to the former only in those cases where power is given by it. It is not to yield to it in any other case whatever. For instance, there is nothing in the Constitution of this state establishing the authority of a Federal Court. Yet the Federal Court when established, will be as constitutional as the Superior Court is now under our Constitution.—It appears to me merely a general clause, the amount of which is, that when they pass an act, if it be in the execution of a power given by the Constitution, it shall be binding on the people, otherwise not. As to the sufficiency or extent of the power, that is another consideration, and has been discussed before.

Mr. *Bloodworth*, This clause will be the destruction of every law which will come in competition with the laws of the United States. Those laws and regulations which have been or shall be made in this state, must be destroyed by it if they come in competition with the powers of Congress. Is it not necessary to define the extent of its operation? Is not the force of our tender laws destroyed by it? The worthy gentleman from Wilmington has endeavoured to obviate the objection as to the Constitution's destroying the credit of our paper money and paying debts in coin, but unsatisfactorily to me. A man assigns by legal fiction a bond to a man in another state—Could that bond be paid by money? I know it is very easy to be wrong. I am conscious of being frequently so. I endeavour to be open to conviction. This clause seems to me

too general, and I think its extent ought to be limited and defined. I should suppose every reasonable man would think some amendment to it was necessary.

Mr. *Maclaine*—Mr. Chairman, That it will destroy the state sovereignty is a very popular argument. I beg leave to have the attention of the committee. Government is formed for the happiness and prosperity of the people at large. The powers given it are for their own good. We have found by several years experience, that government taken by itself nominally, without adequate power, is not sufficient to promote their prosperity. Sufficient powers must be given to it. The powers to be given the general government, are proposed to be withdrawn from the authority of the state governments, in order to protect and secure the union at large. This proposal is made to the people. No man will deny their authority to delegate powers and recall them, in all free countries.

But, says the gentleman last up, the construction of the Constitution is in the power of Congress, and it will destroy the sovereignty of the state governments. It may be justly said, that it diminishes the power of the state Legislatures, and the diminution is necessary to the safety and prosperity of the people. But it may be fairly said, that the members of the general government, the President, Senators and Representatives whom we send thither by our free suffrages to consult our common interest, will not wish to destroy the state governments, because the existence of the general government will depend on that of the state governments. But what is the sovereignty, and who is Congress? One branch—the people at large, and the other branch the states by their Representatives. Do people fear the delegation of power to themselves—to their own Representatives? But he objects, that the laws of the union are to be the supreme laws of the land. Is it not proper that their laws should be the law of the land, and paramount to those of any particular state? Or is it proper that the laws of any particular state should controul the laws of the United States? Shall a part controul the whole? To permit the local laws of any state to controul the laws of the union, would be to give the general government no powers at all. If the Judges are not to be bound by it, the powers of Congress will be nugatory. This is self-evident

self-evident and plain. Bring it home to every understanding; it is so clear it will force itself upon it. The worthy gentleman says, in contradiction to what I have observed, that the clause which restrains the states from emitting paper money, &c. will operate upon the present circulating paper money, and that gold and silver must pay paper contracts. The clause cannot possibly have a retrospective view. It cannot affect the existing currency in any manner, except to enhance its value by the prohibition of future emissions. It is contrary to the universal principles of jurisprudence, that a law or Constitution should have a retrospective operation, unless it be expressly provided that it shall. Does he deny the power of the Legislature to fix a scale of depreciation as a criterion to regulate contracts made for depreciated money? As to the question he has put of an assigned bond, I answer that it can be paid with paper money. For this reason—the assignee can be in no better situation than the assignor. If it be regularly transferred, it will appear what person had the bond originally, and the present possessor can recover nothing but what the original holder of it could. Another reason which may be urged is, that the Federal Courts could have no cognizance of such a suit. Those courts have no jurisdiction in cases of debt between the citizens of the same state. The assignor being a citizen of the same state with the debtor, and assigning it to a citizen of another state to avoid the intent of the Constitution, the assignee can derive no advantage from the assignment, except what the assignor had a right to, and consequently the gentleman's objection falls to the ground.

Every gentleman must see the necessity for the laws of the union to be paramount to those of the separate states; and that the powers given by this Constitution must be executed. What, shall we ratify a government and then say it shall not operate? This would be the same as not to ratify. As to amendments, the best characters in the country, and those whom I most highly esteem, wish for amendments. Some parts of it are not organized to my wish. But I apprehend no danger from the structure of the government. One gentleman [Mr. Bass] said he thought it neither necessary nor proper. For my part, I think it essential to our very existence as a nation, and our happiness
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and prosperity as a free people. The men who composed it were men of great abilities and various minds. They carried their knowledge with them. It is the result, not only of great wisdom and mutual reflection, but of "mutual deference and concession." It has trifling faults, but they are not dangerous. Yet at the same time I declare, that if gentlemen propose amendments, if they be not such as would destroy the government entirely, there is not a single Member here more willing to agree to them than myself.

Mr. *Davie*—Mr. Chairman, Permit me, Sir, to make a few observations on the operation of the clause so often mentioned. This Constitution, as to the powers therein granted, is constantly to be the supreme law of the land. Every power ceded by it must be executed, without being counteracted by the laws or Constitutions of the individual states. Gentlemen should distinguish that it is not to be the supreme law in the exercise of a power not granted. It can be supreme only in cases consistent with the powers specifically granted, and not in usurpations. If you grant any power to the federal government, the laws made in pursuance of that power, must be supreme and untroubled in their operation. This consequence is involved in the very nature and necessity of the thing. The only rational enquiry is, whether those powers are necessary, and whether they are properly granted. To say that you have vested the federal government with power to legislate for the union, and then deny the supremacy of the laws, is a solecism in terms. With respect to its operation on our own paper money, I believe that a little consideration will satisfy every man that it cannot have the effect asserted by the gentleman from New-Hanover. The Federal Convention knew that several states had large sums of paper money in circulation, and that it was an interesting property, and they were sensible that those states would never consent to its immediate destruction, or ratify any system that would have that operation. The mischief already done could not be repaired; all that could be done was to form some limitation to this great political evil. As the paper money had become private property, and the object of numberless contracts, it could not be destroyed or intermeddled with in that situation, although its baneful

ful tendency was obvious and undeniable ; it was, however, effecting an important object to put bounds to this growing mischief. If the states had been compelled to sink the paper money instantly, the remedy might have been worse than the disease. As we could not put an immediate end to it, we were content with prohibiting its future increase, looking forward to its entire extinguishment when the states that had an emission circulating, should be able to call it in by a gradual redemption. In Pennsylvania, their paper money was not a tender in discharge of private contracts ; in South-Carolina their bills became eventually a tender ; and in Rhode-Island, New-York, New-Jersey, and North-Carolina the paper money was made a legal tender in all cases whatsoever. The other states were sensible that the destruction of the circulating paper, would be a violation of the rights of private property, and that such a measure would render the accession of those states to the system absolutely impracticable. The injustice and pernicious tendency of this disgraceful policy were viewed with great indignation by the states which adhered to the principles of justice. In Rhode-Island the paper money had depreciated to eight for one, and a hundred per cent. with us. The people of Massachusetts and Connecticut had been great sufferers by the dishonesty of Rhode-Island, and similar complaints existed against this state. This clause, because in some measure a preliminary with the gentlemen who represented the other states, " You have," said they, " by your iniquitous laws and paper emissions, shamefully defrauded our citizens. The Confederation prevented our compelling you to do them justice, but before we confederate with you again, you must not only agree to be honest, but put it out of your power to be otherwise." Sir, a Member from Rhode-Island itself, could not have set his face against such language. The clause was, I believe, unanimously assented to ; it has only a future aspect, and can by no means have a retrospective operation. And I trust the principles upon which the Convention proceeded, will meet the approbation of every honest man.

Mr. Cabarrus—Mr. Chairman, I contend that the clause which prohibits the states from emitting bills of credit, will not affect our present paper money. The clause has

no retrospective view. This Constitution declares in the most positive terms, that no *ex post facto* law shall be passed by the general government. Were this clause to operate retrospectively, it would clearly be *ex post facto*, and repugnant to the express provision of the Constitution. How then in the name of God, can the Constitution take our paper money away? If we have contracted for a sum of money we ought to pay according to the nature of our contract. Every honest man will pay in specie who engaged to pay it. But if we have contracted for a sum of paper money, it must be clear to every man in this committee, that we shall pay in paper money. This is a Constitution for the *future* government of the United States. It does not look back. Every gentleman must be satisfied on the least reflection, that our paper money will not be destroyed. To say that it will be destroyed, is a popular argument, but not founded in fact in my opinion. I had my doubts, but on consideration I am satisfied.

Mr. *Bloodworth*—Mr. Chairman, I beg leave to ask, if the payment of sums now due be *ex post facto*? Will it be an *ex post facto* law, to compel the payment of money now due in silver coin? If suit be brought in the Federal Court against one of our citizens for a sum of money, will paper money be received to satisfy the judgment? I enquire for information—my mind is not yet satisfied. It has been said that we are to send our own gentlemen to represent us, and that there is not the least doubt they will put that construction on it which will be most agreeable to the people they represent. But it behoves us to consider, whether they can do so if they would when they mix with the body of Congress. The northern states are much more populous than the southern ones. To the north of the Susquehannah there are thirty-six Representatives, and to the south of it only twenty-nine; they will always out-vote us. Sir, we ought to be particular in adopting a Constitution which may destroy our currency, when it is to be the supreme law of the land, and prohibits the emission of paper money. I am not, for my own part, for giving an indefinite power. Gentlemen of the best abilities differ in the construction of the Constitution. The Members of Congress will differ too. Human nature is fallible. I am not for throwing ourselves out of the union. But

we ought to be cautious by proposing amendments. The majority in several great adopting states was very trifling. Several of them have proposed amendments, but not in the mode most satisfactory to my mind. I hope this Convention never will adopt it till the amendments are actually obtained.

Mr. Iredell—Mr. Chairman, With respect to this clause, it cannot have the operation contended for. There is nothing in the Constitution which affects our present paper money. It prohibits for the future the emitting of any, but it does not interfere with the paper money now actually in circulation in several states. There is an express clause which protects it. It provides that there shall be no *ex post facto* law. This would be *ex post facto*, if the construction contended for were right, as has been observed by another gentleman. If a suit were brought against a man in the Federal Court, and execution should go against his property, I apprehend, he would, under this Constitution, have a right to pay our paper money, there being nothing in the Constitution taking away the validity of it. Every individual in the United States, will keep his eye watchfully over those who administer the general government, and no usurpation of power will be acquiesced in. The possibility of usurping powers ought not to be objected against it. Abuse may happen in any government. The only resource against usurpation, is the inherent right of the people to prevent its exercise. This is the case in all free governments in the world. The people will resist if the government usurp powers not delegated to it. We must run the risk of abuse. We must take care to give no more power than is necessary, but having given that we must submit to the possible dangers arising from it. With respect to the great weight of the northern states, it will not, on a candid examination, appear so great as the gentleman supposes. At present the regulation of our representation is merely temporary. Whether greater or less it will hereafter depend on actual population. The extent of this state is very great, almost equal to that of any state in the union. And our population will probably be in proportion. To the north of Pennsylvania there are twenty-seven votes. To the south of Pennsylvania there are thirty votes, leaving Pennsylvania out. Pennsylvania has
eight

eight votes. In the division of what is called the northern and southern interests, Pennsylvania does not appear to be decidedly in either scale. Though there may be a combination of the northern states, it is not certain that the interest of Pennsylvania will coincide with theirs. If at any time she join us, we shall have thirty-eight against twenty-seven. Should she be against us, they will have only thirty-five to thirty. There are two states to the northward who have, in some respect, a similarity of interests with ourselves. What is the situation of New-Jersey? It is in one respect similar to ours. Most of the goods which they use come through New-York, and they pay for the benefit of New-York, as we pay for that of Virginia. It is so with Connecticut, so that in every question between importing and non-importing states, we may expect that two of the northern states would probably join with North-Carolina. It is impossible, perhaps, to destroy altogether this idea of separate interests. But the difference between the states does not appear to me so great as the gentleman imagines; and I beg leave to say, that in proportion to the increase of population, the southern states will have greater weight than the northern, as they have such large quantities of land still uncultivated, which is not so much the case to the north. If we should suffer a small temporary inconvenience, we shall be compensated for it by having the weight of population in our favour in future.

Mr. Bloodworth—Mr. Chairman, When I was in Congress, the southern and northern interests divided at Sufquehanna. I believe it is so now. The advantage to be gained by future population is no argument at all. Do we gain any thing when the other states have an equality of Members in the Senate, notwithstanding the increase of Members in the House of Representatives? This is no consequence at all. I am sorry to mention it, but I can produce an instance which will prove the facility of misconstruction. [Here *Mr. Bloodworth* cited an instance which took place in Congress with respect to the Indian trade, which not having been distinctly heard is omitted.]

They may trample on the rights of the people of North-Carolina if there be not sufficient guards and checks. I only mentioned this to shew that there may be misconstruc-

tions, and that in so important a case as a Constitution, every thing ought to be clear and intelligible, and no ground left for disputes.

Mr. *Caldwell*—Mr. Chairman, It is very evident that there is a great necessity for perspicuity. In the sweeping clause there are words which are not plain and evident. It says, that "this Constitution and the laws of the United States which shall be made in pursuance thereof, &c. shall be the supreme law of the land." The word *pursuance* is equivocal and ambiguous; a plainer word would be better. They may pursue *bad* as well as *good* measures, and therefore the word is improper—it authorises bad measures. Another thing is remarkable, that gentlemen as an answer to every improper part of it, tell us that every thing is to be done by our own Representatives, who are to be good men. There is no security that they will be so, or continue to be so. Should they be virtuous when elected, the laws of Congress will be unalterable. These laws must be annihilated by the same body which made them. It appears to me that the laws which they make, cannot be altered without calling a Convention. [Mr. *Caldwell* added some reasons for this opinion, but spoke too low to be heard.]

Governor *Johnston*—Mr. Chairman, I knew that many gentlemen in this Convention were not perfectly satisfied with every article of this Constitution, but I did not expect so many would object to this clause. The Constitution must be the supreme law of the land, otherwise it will be in the power of any one state to counteract the other states, and withdraw itself from the union. The laws made in pursuance thereof by Congress, ought to be the supreme law of the land, otherwise any one state might repeal the laws of the union at large. Without this clause, the whole Constitution would be a piece of blank paper. Every treaty should be the supreme law of the land; without this, any one state might involve the whole union in war. The worthy member who was last up, has started an objection which I cannot answer. I do not know a word in the English language so good as the word *pursuance*, to express the idea meant and intended by the Constitution. Can any one understand the sentence any other way than this? When Congress makes a law in vir-

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tue of their constitutional authority, it will be an actual law. I do not know a more expressive or a better way of representing the idea by words. Every law consistent with the Constitution, will have been made in pursuance of the powers granted by it. Every usurpation or law repugnant to it, cannot have been made in pursuance of its powers. The latter will be nugatory and void. I am at a loss to know what he means, by saying the laws of the union will be unalterable. Are laws as immutable as Constitutions? Can any thing be more absurd than assimilating the one to the other? The idea is not warranted by the Constitution, nor consistent with reason.

Mr. *J. M'Dowall* wished to know how the taxes are to be paid which Congress were to lay in this state. He asked if paper money would discharge them. He calculated that the taxes would be higher, and did not know how they could be discharged. For says he, every man is to pay so much more, and the poor man has not the money locked up in his chest. He was of opinion that our laws could be repealed entirely by those of Congress.

Mr. *Maclaine*—Mr. Chairman, Taxes must be paid in gold or silver coin, and not in imaginary money. As to the subject of taxation, it has been the opinion of many intelligent men that there will be no taxes laid immediately, or if any, that they will be very inconsiderable. There will be no occasion for it, as proper regulations will raise very large sums of money. We know that Congress will have sufficient power to make such regulations. The moment that the Constitution is established, Congress will have credit with foreign nations. Our situation being known they can borrow any sum. It will be better for them to raise any money they want at present by borrowing than by taxation. It is well known that in this country gold and silver vanish when paper money is made. When we adopt, if ever, gold and silver will again appear in circulation. People will let their hard money go, because they know that paper money cannot repay it. After the war we had more money in gold and silver in circulation, than we have nominal paper money now. Suppose Congress wished to raise a million of money more than the imposts: Suppose they borrow it. They can easily borrow it in Europe at four per cent. The interest of that sum will

will be but 40,000*l*. So that the people instead of having the whole 1,000,000*l*. to pay, will have but 40,000*l*. to pay, which will hardly be felt. The proportion of 40,000*l*. for this state, would be a trifle. In seven years time the people would be able, by only being obliged to pay the interest annually, to save money, and pay the whole principal perhaps afterwards without much difficulty. Congress will not lay a single tax when it is not to the advantage of the people at large. The western lands will also be a considerable fund. The sale of them will aid the revenue greatly, and we have reason to believe the impost will be productive.

Mr. *J. M'Dowall*—Mr. Chairman, Instead of reasons and authorities to convince me, assertions are made. Many respectable gentlemen are satisfied that the taxes will be higher. By what authority does the gentleman say that the impost will be productive, when our trade is come to nothing? Sir, borrowing money is detrimental and ruinous to nations. The interest is lost money. We have been obliged to borrow money to pay interest! We have no way of paying additional and extraordinary sums. The people cannot stand them. I should be extremely sorry to live under a government which the people could not understand, and which it would require the greatest abilities to understand. It ought to be plain and easy to the meanest capacity. What would be the consequence of ambiguity? It may raise animosity and revolutions, and involve us in bloodshed.—It becomes us to be extremely cautious.

Mr. *MacLaine*—Mr. Chairman, I would ask the gentleman what is the state of our trade? I do not pretend to a very great knowledge in trade, but I know something of it. If our trade be in a low situation, it must be the effect of our present weak government. I really believe that Congress will be able to raise almost what sums they please by the impost. I know it will, though the gentleman may call it assertion. I am not unacquainted with the territory or resources of this country. The resources, under proper regulations, are very great. In the course of a few years we can raise money without borrowing a single shilling. It is not disgraceful to borrow money. The richest nations have recurred to loans on some emergencies. I believe, as much as I do in my existence, that

Congress

Congress will have it in their power to borrow money if our government be such as people can depend upon. They have been able to borrow now under the present feeble system: If so, can there be any doubt of their being able to do it under a respectable government?

Mr. *M'Dowall* replied, that our trade was on a contemptible footing—That it was come almost to nothing—and lower in North-Carolina than any where—That therefore little could be expected from the impost.

Mr. *J. Galloway*—Mr. Chairman, I should make no objection to this clause were the powers granted by the Constitution sufficiently defined: For I am clearly of opinion that it is absolutely necessary for every government, and especially for a general government, that its laws should be the supreme law of the land. But I hope the gentlemen of the committee will advert to the 10th section of the first article. This is a negative which the Constitution of our own state does not impose upon us. I wish the committee to attend to that part of it which provides that no state shall pass any law which will impair the obligation of contracts. Our public securities are at a low ebb, and have been so for many years. We well know that this country has taken those securities as specie. This hangs over our heads as a contract. There is a million and a half in circulation at least. That clause of the Constitution may compel us to make good the nominal value of these securities. I trust this country never will leave it to the hands of the general government to redeem the securities which they have already given. Should this be the case, the consequence will be, that they will be purchased by speculators, when the citizens will part with them perhaps for a very trifling consideration. Those speculators will look at the Constitution, and see that they will be paid in gold and silver. They will buy them at a half crown in the pound, and get the full nominal value for them in gold and silver. I therefore wish the committee to consider whether North-Carolina can redeem those securities in the manner most agreeable to her citizens, and justifiable to the world, if this Constitution be adopted.

Mr. *Davie*—Mr. Chairman, I believe neither the tenth section cited by the gentleman, nor any other part of the Constitution has vested the general government with power

et to interfere with the public securities of any state. I will venture to say, that the last thing which the general government will attempt to do, will be this. They have nothing to do with it. The clause refers merely to contracts between individuals. That section is the best in the Constitution. It is founded on the strongest principles of justice. It is a section in short, which I thought would have endeared the Constitution to this country. When the worthy gentleman comes to consider, he will find that the general government cannot possibly interfere with such securities. How can it? It has no negative clause to that effect. Where is there a negative clause, operating negatively on the states themselves? It cannot operate retrospectively, for this would be repugnant to its own express provisions. It will be left to ourselves to redeem them as we please. We wished we could put it on the shoulders of Congress, but could not. Securities may be higher, but never less. I conceive, Sir, that this is a very plain case, and that it must appear perfectly clear to the committee, that the gentleman's alarms are groundless.

The committee now rose, Mr. President resumed the chair, and Mr. Kenan reported, that the committee had, according to order, again had the said proposed Constitution under their consideration, but not having had time to go through the same, had directed him to move for leave to sit again to-morrow.

Resolved, That this Convention will again to-morrow resolve itself into a committee of the whole Convention on the said proposed Constitution.

The Convention then adjourned until to-morrow morning nine o'clock.

W E D N E S D A Y, J U L Y 30, 1788.

The Convention met according to adjournment, and then resolved into a committee of the whole Convention, to take into further consideration the said proposed Constitution.—Mr. Kenan in the chair.

The last clause of the sixth article read.

Mr. *Henry Abbot*, after a short exordium which was not distinctly heard, proceeded thus—Some are afraid, Mr. Chairman, that should the Constitution be received, they

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would be deprived of the privilege of worshipping God according to their consciences; which would be taking from them a benefit they enjoy under the present Constitution. They wish to know if their religious and civil liberties be secured under this system, or whether the general government may not make laws infringing their religious liberties. The worthy member from Edenton mentioned sundry political reasons why treaties should be the supreme law of the land. It is feared by some people, that by the power of making treaties, they might make a treaty engaging with foreign powers to adopt the Roman catholic religion in the United States, which would prevent the people from worshipping God according to their own consciences. The worthy member from Halifax has in some measure satisfied my mind on this subject. But others may be dissatisfied. Many wish to know what religion shall be established. I believe a majority of the community are Presbyterians. I am for my part against any exclusive establishment, but if there were any, I would prefer the Episcopal. The exclusion of religious tests is by many thought dangerous and impolitic. They suppose that if there be no religious test required, Pagans, Deists and Mahometans might obtain offices among us, and that the Senate and Representatives might all be Pagans. Every person employed by the general and state governments is to take an oath to support the former. Some are desirous to know how, and by whom they are to swear, since no religious tests are required—whether they are to swear by Jupiter, Juno, Minerva, Proserpine or Pluto. We ought to be suspicious of our liberties. We have felt the effects of oppressive measures, and know the happy consequences of being jealous of our rights. I would be glad some gentleman would endeavour to obviate these objections, in order to satisfy the religious part of the society. Could I be convinced that the objections were well founded, I would then declare my opinion against the Constitution. [Mr. Abbot added several other observations, but spoke too low to be heard.]

Mr. Iredell—Mr. Chairman, Nothing is more desirable than to remove the scruples of any gentleman on this interesting subject: Those concerning religion are entitled to particular respect. I did not expect any objection to
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this particular regulation, which in my opinion, is calculated to prevent evils of the most pernicious consequences to society. Every person in the least conversant in the history of mankind, knows what dreadful mischiefs have been committed by religious persecutions. Under the colour of religious tests the utmost cruelties have been exercised. Those in power have generally considered all wisdom centered in themselves, that they alone had a right to dictate to the rest of mankind, and that all opposition to their tenets was profane and impious. The consequence of this intolerant spirit has been, that each church has in turn set itself up against every other, and persecutions and wars of the most implacable and bloody nature have taken place in every part of the world. America has set an example to mankind to think more modestly and reasonably; that a man may be of different religious sentiments from our own, without being a bad member of society. The principles of toleration, to the honour of this age, are doing away those errors and prejudices which have so long prevailed even in the most intolerant countries. In the Roman catholic countries, principles of moderation are adopted, which would have been spurned at a century or two ago. I should be sorry to find, when examples of toleration are set even by arbitrary governments, that this country, so impressed with the highest sense of liberty, should adopt principles on this subject, that were narrow and illiberal. I consider the clause under consideration as one of the strongest proofs that could be adduced, that it was the intention of those who formed this system, to establish a general religious liberty in America. Were we to judge from the examples of religious tests in other countries, we should be persuaded that they do not answer the purpose for which they are intended. What is the consequence of such in England? In that country no man can be a Member in the House of Commons, or hold any office under the Crown, without taking the sacrament according to the rites of the church. This in the first instance must degrade and profane a rite, which never ought to be taken but from a sincere principle of devotion. To a man of base principles, it is made a mere instrument of civil policy. The intention was to exclude all persons from offices, but the members of the church of England. Yet it is notorious,

rious, that Dissenters qualify themselves for offices in this manner, though they never conform to the church on any other occasion ; and men of no religion at all, have no scruple to make use of this qualification. It never was known that a man who had no principles of religion, hesitated to perform any rite when it was convenient for his private interest. No test can bind such a one. I am therefore clearly of opinion, that such a discrimination would neither be effectual for its own purposes, nor if it could, ought it by any means to be made. Upon the principles I have stated, I confess the restriction on the power of Congress in this particular has my hearty approbation. They certainly have no authority to interfere in the establishment of any religion whatsoever, and I am astonished that any gentleman should conceive they have. Is there any power given to Congress in matters of religion? Can they pass a single act to impair our religious liberties? If they could, it would be a just cause of alarm. If they could, Sir, no man would have more horror against it than myself. Happily no sect here is superior to another. As long as this is the case, we shall be free from those persecutions and distractions with which other countries have been torn. If any future Congress should pass an act concerning the religion of the country, it would be an act which they are not authorised to pass by the Constitution, and which the people would not obey. Every one would ask, " Who " authorised the government to pass such an act? It is not " warranted by the Constitution, and is a barefaced usur- " pation." The power to make treaties can never be supposed to include a right to establish a foreign religion among ourselves, though it might authorise a toleration of others.

But it is objected, that the people of America may perhaps chuse Representatives who have no religion at all, and that Pagans and Mahometans may be admitted into offices. But how is it possible to exclude any set of men, without taking away that principle of religious freedom which we ourselves so warmly contend for? This is the foundation on which persecution has been raised in every part of the world. The people in power were always in the right, and every body else wrong. If you admit the least difference, the door to persecution is opened. Nor would it answer the purpose, for the worst part of the excluded sects

would

would comply with the test, and the best men only be kept out of our counsels. But it is never to be supposed that the people of America will trust their dearest rights to persons who have no religion at all, or a religion materially different from their own. It would be happy for mankind if religion was permitted to take its own course, and maintain itself by the excellence of its own doctrines. The divine author of our religion never wished for its support by worldly authority. Has he not said, *that the gates of hell shall not prevail against it*? It made much greater progress for itself, than when supported by the greatest authority upon earth.

It has been asked by that respectable gentleman [Mr. Abbot] what is the meaning of that part, where it is said, that the United States shall *guarantee* to every state in the union a republican form of government, and why a *guarantee of religious freedom* was not included. The meaning of the guarantee provided was this—There being thirteen governments confederated, upon a republican principle, it was essential to the existence and harmony of the confederacy that each should be a republican government, and that no state should have a right to establish an aristocracy or monarchy. That clause was therefore inserted to prevent any state from establishing any government but a republican one. Every one must be convinced of the mischief that would ensue, if any state had a right to change its government to a monarchy. If a monarchy was established in any one state, it would endeavour to subvert the freedom of the others, and would probably by degrees succeed in it. This must strike the mind of every person here who recollects the history of Greece when she had confederated governments. The King of Macedon by his arts and intrigues got himself admitted a member of the Amphyctionic council, which was the superintending government of the Grecian republics, and in a short time he became master of them all. It is then necessary that the members of a confederacy should have similar governments. But consistently with this restriction the states may make what change in their own governments they think proper. Had Congress undertaken to guarantee *religious freedom*, or any particular species of it, they would then have had a pretence to interfere in a subject they have nothing to

do with. Each state, so far as the clause in question does not interfere, must be left to the operation of its own principles.

There is a degree of jealousy which it is impossible to satisfy. Jealousy in a free government ought to be respected; But it may be carried to too great an extent. It is impracticable to guard against all *possible* danger of people's choosing their officers indiscreetly. If they have a right to chuse, they may make a bad choice. I met by accident with a pamphlet this morning, in which the author states as a very serious danger, that the Pope of Rome might be elected President. I confess this never struck me before, and if the author had read all the qualifications of a President, perhaps his fears might have been quieted. No man but a native, and who has resided fourteen years in America, can be chosen President. I know not all the qualifications for a Pope, but I believe he must be taken from the college of Cardinals, and probably there are many previous steps necessary before he arrives at this dignity. A native of America must have very singular good fortune, who after residing fourteen years in his own country, should go to Europe, enter into Romish orders, obtain the promotion of Cardinal, afterwards that of Pope, and at length be so much in the confidence of his own country, as to be elected President. It would be still more extraordinary if he should give up his Popedom for our Presidency. Sir, it is impossible to treat such idle fears with any degree of gravity. Why is it not objected, that there is no provision in the Constitution against electing one of the Kings of Europe President? It would be a clause equally rational and judicious.

I hope that I have in some degree satisfied the doubts of the gentleman. This article is calculated to secure universal religious liberty, by putting all sects on a level, the only way to prevent persecution. I thought nobody would have objected to this clause, which deserves in my opinion the highest approbation. This country has already had the honour of setting an example of civil freedom, and I trust it will likewise have the honour of teaching the rest of the world the way to religious freedom also. God grant both may be perpetuated to the end of time.

Mr. Abbot, after expressing his obligations for the explanation

planation which had been given, observed that no answer had been given to the question he put concerning the form of an oath.

Mr. *Iredell*—Mr. Chairman, I beg pardon for having omitted to take notice of that part which the worthy gentleman has mentioned. It was by no means from design, but from its having escaped my memory, as I have not the convenience of taking notes. I shall now satisfy him in that particular in the best manner in my power.

According to the modern definition of an oath, it is considered a "solemn appeal to the Supreme Being for the truth of what is said, by a person who believes in the existence of a Supreme Being, and in a future state of rewards and punishments, according to that form which will bind his conscience most." It was long held, that no oath could be administered but upon the New Testament, except to a Jew, who was allowed to swear upon the old. According to this notion, none but Jews and Christians could take an oath, and Heathens were altogether excluded. At length, by the operation of principles of toleration, these narrow notions were done away. Men at length considered, that there were many virtuous men in the world who had not had an opportunity of being instructed either in the Old or New Testament, who yet very sincerely believed in a Supreme Being, and in a future state of rewards and punishments. It is well known that many nations entertain this belief who do not believe either in the Jewish or Christian religion. Indeed there are few people so grossly ignorant or barbarous as to have no religion at all. And if none but Christians or Jews could be examined upon oath, many innocent persons might suffer for want of the testimony of others. In regard to the form of an oath, that ought to be governed by the religion of the person taking it. I remember to have read an instance which happened in England, I believe in the time of Charles the second: A man who was a material witness in a cause, refused to swear upon the book, and was admitted to swear with his uplifted hand. The jury had a difficulty in crediting him, but the Chief Justice told them, he had, in his opinion, taken as strong an oath as any of the other witnesses, though had he been to swear himself, he should have kissed the book. A very remarkable

remarkable instance also happened in England about forty years ago, of a person who was admitted to take an oath according to the rights of his own country, though he was an Heathen. He was an East-Indian, who had a great suit in Chancery, and his answer upon oath to a bill filed against him, was absolutely necessary. Not believing either in the Old or New Testament, he could not be sworn in the accustomed manner, but was sworn according to the form of the Gentoo religion, which he professed, by touching the foot of a Priest. It appeared, that according to the tenets of this religion, its members believed in a Supreme Being, and in a future state of rewards and punishments. It was accordingly held by the Judges, upon great consideration, that the oath ought to be received; they considering that it was probable those of that religion were equally bound in conscience by an oath according to their form of swearing, as they themselves were by one of theirs; and that it would be a reproach to the justice of the country, if a man, merely because he was of a different religion from their own, should be denied redress of an injury he had sustained. Ever since this great case, it has been universally considered, that in administering an oath, it is only necessary to enquire if the person who is to take it, believes in a Supreme Being, and in a future state of rewards and punishments. If he does, the oath is to be administered according to that form which it is supposed will bind his conscience most. It is, however, necessary that such a belief should be entertained, because otherwise there would be nothing to bind his conscience that could be relied on, since there are many cases where the terror of punishment in this world for perjury, could not be dreaded. I have thus endeavoured to satisfy the committee. We may, I think, very safely leave religion to itself; and as to the form of the oath, I think this may well be trusted to the general government, to be applied on the principles I have mentioned.

Governor *Johnston* expressed great astonishment that the people were alarmed on the subject of religion. This, he said, must have arisen from the great pains which had been taken to prejudice mens minds against the Constitution. He begged leave to add the following few observations to what had been so ably said by the gentleman last up.

I read the Constitution over and over, but could not see one cause of apprehension or jealousy on this subject. When I heard there were apprehensions that the Pope of Rome could be the President of the United States, I was greatly astonished. It might as well be said that the King of England or France, or the Grand Turk could be chosen to that office. It would have been as good an argument. It appears to me that it would have been dangerous, if Congress could intermeddle with the subject of religion. True religion is derived from a much higher source than human laws. When any attempt is made by any government to restrain mens consciences, no good consequence can possibly follow. It is apprehended that Jews, Mahometans, Pagans, &c. may be elected to high offices under the government of the United States. Those who are Mahometans, or any others, who are not professors of the Christian religion, can never be elected to the office of President or other high office but in one of two cases. First, if the people of America lay aside the Christian religion altogether, it may happen. Should this unfortunately take place, the people will chuse such men as think as they do themselves. Another case is, if any persons of such a description, should, notwithstanding their religion, acquire the confidence and esteem of the people of America by their good conduct and practice of virtue, they may be chosen. I leave it to gentlemens candour to judge what probability there is of the people's chusing men of different sentiments from themselves.

But great apprehensions have been raised as to the influence of the eastern states. When you attend to circumstances, this will have no weight. I know but two or three states where there is the least chance of establishing any particular religion. The people of Massachusetts and Connecticut are mostly Presbyterians. In every other state, the people are divided into a great number of sects. In Rhode-Island the tenets of the Baptists I believe prevail. In New-York they are divided very much: the most numerous are the Episcopalians and the Baptists. In New-Jersey they are as much divided as we are. In Pennsylvania, if any sect prevails more than another it is that of the Quakers. In Maryland the Episcopalians are most numerous, though there are other sects. In Virginia there

are many sects ; you all know what their religious sentiments are. So in all the southern states they differ ; as also in New-Hampshire. I hope therefore that gentlemen will see there is no cause of fear that any one religion shall be exclusively established.

Mr. *Caldwell* thought that some danger might arise. He imagined it might be objected to in a political as well as in a religious view. In the first place, he said there was an invitation for Jews, and Pagans of every kind, to come among us. At some future period, said he, this might endanger the character of the United States. Moreover, even those who do not regard religion, acknowledge that the Christian religion is best calculated of all religions to make good members of society, on account of its morality. I think then, added he, that in a political view, those gentlemen who formed this Constitution, should not have given this invitation to Jews and Heathens. All those who have any religion are against the emigration of those people from the eastern hemisphere.

Mr. *Spencer* was an advocate for securing every unalienable right, and that of worshipping God according to the dictates of conscience in particular. He therefore thought that no one particular religion should be established. Religious tests, said he, have been the foundation of persecutions in all countries. Persons who are conscientious will not take the oath required by religious tests, and will therefore be excluded from offices, though equally capable of discharging them as any member of the society. It is feared, continued he, that persons of bad principles, Deists, Atheists, &c. may come into this country, and there is nothing to restrain them from being eligible to offices. He asked if it was reasonable to suppose that the people would chuse men without regarding their characters. Mr. *Spencer* then continued thus—Gentlemen urge that the want of a test admits the most vicious characters to offices. I desire to know what test could bind them. If they were of such principles, it would not keep them from enjoying those offices. On the other hand, it would exclude from offices conscientious and truly religious people, though equally capable as others. Conscientious persons would not take such an oath, and would be therefore excluded. This would be a great cause of objection to a

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religious test. But in this case as there is not a religious test required, it leaves religion on the solid foundation of its own inherent validity, without any connexion with temporal authority, and no kind of oppression can take place. I confess it strikes me so. I am sorry to differ from the worthy gentleman. I cannot object to this part of the Constitution. I wish every other part was as good and proper.

Governor *Johnston* approved of the worthy member's candour. He admitted a possibility of Jews, Pagans, &c. emigrating to the United States; yet, he said, they could not be in proportion to the emigrations of Christians who should come from other countries; that in all probability the children even of such people would be Christians; and that this, with the rapid population of the United States, their zeal for religion and love of liberty, would, he trusted, add to the progress of the Christian religion among us.

The seventh article read without any objection against it.

Governor *Johnston*, after a short speech which was not distinctly heard, made a motion to the following effect:

That this committee having fully deliberated on the Constitution proposed for the future government of the United States of America, by the Federal Convention lately held at Philadelphia, on the 17th day of September last, and having taken into their serious and solemn consideration the present critical situation of America, which induces them to be of opinion, that though certain amendments to the said Constitution may be wished for, yet that those amendments should be proposed subsequent to the ratification on the part of this state, and not previous to it: They therefore recommend that the Convention do ratify the Constitution, and at the same time propose amendments, to take place in one of the modes prescribed by the Constitution.

Mr. *Lenoir*—Mr. Chairman, I conceive that I shall not be out of order to make some observations on this last part of the system, and take some retrospective view of some other parts of it. I think it not proper for our adoption, as I consider that it endangers our liberties. When we consider this system collectively, we must be surprised to think, that any set of men who were delegated to amend
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the Confederation, should propose to annihilate it. For that and this system are utterly different, and cannot exist together. It has been said that the fullest confidence should be put in those characters who formed this Constitution. We will admit them in private and public transactions to be good characters. But, Sir, it appears to me and every other Member of this committee, that they exceeded their powers. Those gentlemen had no sort of power to form a new Constitution altogether, neither had the citizens of this country such an idea in their view. I cannot undertake to say what principles actuated them. I must conceive they were mistaken in their politics, and that this system does not secure the unalienable rights of freemen. It has some aristocratical and some monarchical features, and perhaps some of them intended the establishment of one of these governments. Whatever might be their intent, according to my views, it will lead to the most dangerous aristocracy that ever was thought of. An aristocracy established on a constitutional bottom!—I conceive (and I believe most of this committee will likewise) that this is so dangerous, that I should like as well to have no Constitution at all. Their powers are almost unlimited.

A Constitution ought to be understood by every one. The most humble and trifling characters in the country have a right to know what foundation they stand upon. I confess I do not see the end of the powers here proposed, nor the reasons for granting them. The principal end of a Constitution is to set forth what must be given up for the common benefit of the community at large, and to secure those rights which ought never to be infringed. The proposed plan secures no right, or if it does, it is in so vague and undeterminate a manner, that we do not understand it. My constituents instructed me to oppose the adoption of this Constitution. The principal reasons are as follow. The right of representation is not fairly and explicitly preserved to the people; it being easy to evade that privilege as provided in this system, and the terms of election being too long. If our General Assembly be corrupt, at the end of the year we can make new men of them by sending others in their stead. It is not so here. If there be any reason to think that human nature is corrupt, and that there is a disposition in men to aspire

to power, they may embrace an opportunity during their long continuance in office, by means of their powers, to take away the rights of the people. The Senators are chosen for six years, and two-thirds of them with the President have most extensive powers. They may enter into a dangerous combination. And they may be continually re-elected. The President may be as good a man as any in existence, but he is but a man. He may be corrupt. He has an opportunity of forming plans dangerous to the community at large. I shall not enter into the minutiae of this system, but I conceive that whatever may have been the intention of its framers, that it leads to a most dangerous aristocracy. It appears to me that instead of securing the sovereignty of the states, it is calculated to melt them down into one solid empire. If the citizens of this state like a consolidated government, I hope they will have virtue enough to secure their rights. I am sorry to make use of the expression, but it appears to me to be a scheme to reduce this government to an aristocracy. It guarantees a republican form of government to the states; when all these powers are in Congress it will only be a form. It will be past recovery when Congress has the power of the purse and the sword. The power of the sword is in explicit terms given to it. The power of direct taxation gives the purse. They may prohibit the trial by jury, which is a most sacred and valuable right. There is nothing contained in this Constitution to bar them from it. The Federal Courts have also appellate cognizance of law and fact: the sole cause of which is to deprive the people of that trial, which it is optional in them to grant or not. We find no provision against infringement on the rights of conscience. Ecclesiastical courts may be established, which will be destructive to our citizens. They may make any establishment they think proper. They have also an exclusive legislation in their ten miles square, to which may be added their power over the militia, who may be carried thither and kept there for life. Should any one grumble at their acts, he would be deemed a traitor, and perhaps taken up and carried to the exclusive legislation, and there tried without a jury. We are told there is no cause to fear. When we consider the great powers of Congress, there is great cause of alarm. They can disarm
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the militia. If they were armed, they would be a resource against great oppressions. The laws of a great empire are difficult to be executed. If the laws of the union were oppressive they could not carry them into effect, if the people were possessed of proper means of defence.

It was cried out that we were in a most desperate situation, and that Congress could not discharge any of their most sacred contracts. I believe it to be the case. But why give more power than is necessary? The men who went to the Federal Convention, went for the express purpose of amending the government, by giving it such additional powers as were necessary. If we should accede to this system, it may be thought proper by a few designing persons to destroy it in a future age in the same manner that the old system is laid aside. The Confederation was binding on all the states. It could not be destroyed but with the consent of all the states. There was an express article to that purpose. The men who were deputed to the Convention, instead of amending the old, as they were solely empowered and directed to do, proposed a new system. If the best characters departed so far from their authority, what may not be apprehended from others who may be agents in the new government.

It is natural for men to aspire to power. It is the nature of mankind to be tyrannical, therefore it is necessary for us to secure our rights and liberties as far as we can. But it is asked why we should suspect men who are to be chosen by ourselves, while it is their interest to act justly, and while men have self-interest at heart? I think the reasons which I have given are sufficient to answer that question. We ought to consider the depravity of human nature; the predominant thirst of power which is in the breast of every one; the temptations our rulers may have, and the unlimited confidence placed in them by this system. These are the foundation of my fears. They would be so long in the general government that they would forget the grievances of the people of the state.

But it is said we shall be ruined if separated from the other states, which will be the case if we do not adopt. If so, I would put less confidence in those states. The states are all bound together by the Confederation, and the
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rest cannot break from us, without violating the most solemn compact. If they break that, they will this.

But it is urged that we ought to adopt because so many other states have. In those states which have patronized and ratified it, many great men have opposed it. The motives of those states I know not. It is the goodness of the Constitution we are to examine. We are to exercise our own judgments, and act independently. And as I conceive we are not out of the union, I hope this Constitution will not be adopted till amendments are made. Amendments are wished for by the other states. It was urged here, that the President should have power to grant reprieves and pardons. This power is necessary with proper restrictions. But the President may be at the head of a combination against the rights of the people, and may reprieve or pardon the whole. It is answered to this that he cannot pardon in cases of impeachment. What is the punishment in such cases? Only removal from office and future disqualification. It does not touch life or property. He has power to do away punishment in every other case. It is too unlimited in my opinion. It may be exercised to the public good, but may also be perverted to a different purpose. Should we get those who will attend to our interest, we should be safe under any Constitution, or without any. If we send men of a different disposition we shall be in danger. Let us give them only such powers as are necessary for the good of the community.

The President has other great powers. He has the nomination of all officers and a qualified negative on the laws. He may delay the wheels of government. He may drive the Senate to concur with his proposal. He has other extensive powers. There is no assurance of the liberty of the press. They may make it treason to write against the most arbitrary proceedings. They have power to controul our elections as much as they please. It may be very oppressive on this state, and all the southern states.

Much has been said of taxation, and the inequality of it on the states. But nothing has been said of the mode of furnishing men. In what proportion are the states to furnish men? Is it in proportion to the whites and blacks? I presume it is. This state has 100,000 blacks. By this Constitution 50 negroes are equal to 30 whites. This
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state therefore, besides the proportion she must raise for her white people, must furnish an additional number for her blacks, in proportion as 30 is to 50. Suppose there be a state to the northward that has 60,000 persons, this state must furnish as many men for the blacks as that whole state, exclusive of those she must furnish for her whites. Slaves instead of strengthening, weaken this state—the regulation will therefore greatly injure it and the other southern states. There is another clause which I do not perhaps well understand. The power of taxation seems to me not to extend to the lands of the people of the United States, for the rule of taxation is, the number of whites and three-fifths of the blacks. Should it be the case that they have no power of taxing this object, must not direct taxation be hard on the greater part of this state? I am not confident that it is so, but it appears to me that they can lay taxes on this object. This will oppress the poor people who have large families of whites, and no slaves to assist them in cultivating the soil, although the taxes are to be laid in proportion of three-fifths of the negroes and all the whites. Another disadvantage to this state will arise from it. This state has made a contract with its citizens. The public securities and certificates I allude to. These may be negotiated to men who live in other states. Should that be the case, these gentlemen will have demands against this state on that account. The Constitution points out the mode of recovery—it must be in the Federal Court only, because controversies between a state and the citizens of another state are cognizable only in the Federal Courts. They cannot be paid but in gold and silver. Actual specie will be recovered in that court. This would be an intolerable grievance without remedy.

I wish not to be so understood as to be so averse to this system, as that I should object to all parts of it, or attempt to reflect on the reputation of those gentlemen who formed it; though it appears to me that I would not have agreed to any proposal but the amendment of the Confederation. If there were any security for the liberty of the people, I would for my own part agree to it. But in this case, as millions yet unborn are concerned, and deeply interested in our decision, I would have the most positive and pointed security. I shall therefore hope that before this House

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will proceed to adopt this Constitution, they will propose such amendments to it, as will make it complete ; and when amendments are adopted, perhaps I will be as ready to accede to it as any man.—One thing will make it aristocratical. Its powers are very indefinite. There was a very necessary clause in the Confederation, which is omitted in this system. That was a clause declaring that every power, &c. not given to Congress, was reserved to the states. The omission of this clause makes the power so much greater. Men will naturally put the fullest construction on the power given them. Therefore lay all restraint on them, and form a plan to be understood by every gentleman of this committee, and every individual of the community.

Mr. Spaight—Mr. Chairman, I am one of those who formed this Constitution. The gentleman says we exceeded our powers. I deny the charge. We were sent with a full power to amend the existing system. This involved every power to make every alteration necessary to meliorate and render it perfect. It cannot be said that we arrogated powers altogether inconsistent with the object of our delegation. There is a clause which expressly provides for future amendments, and it is still in your power. What the Convention has done is a mere proposal. It was found impossible to improve the old system, without changing its very form. For by that system the three great branches of government are blended together. All will agree that the concession of power to a government so constructed, is dangerous. The proposing a new system to be established by the assent and ratification of nine states, arose from the necessity of the case. It was thought extremely hard that one state, or even three or four states, should be able to prevent necessary alterations. The very refractory conduct of Rhode-Island in uniformly opposing every wise and judicious measure, taught us how impolitic it would be, to put the general welfare in the power of a few members of the union. It was therefore thought by the Convention, that if so great a majority as nine states should adopt it, it would be right to establish it. It was recommended by Congress to the state Legislatures to refer it to the people of their different states. Our Assembly has confirmed what they have done, by proposing it to the consideration

of the people. It was there and not here that the objection should have been made. This Convention is therefore to consider the Constitution, and whether it be proper for the government of the people of America; and had it been proposed by any one individual, under these circumstances, it would be right to consider whether it be good or bad. The gentleman has insinuated, that this Constitution, instead of securing our liberties, is a scheme to enslave us. He has produced no proof, but rests it on his bare assertion—an assertion which I am astonished to hear, after the ability with which every objection has been fully and clearly refuted in the course of our debates. I am for my part conscious of having had nothing in view but the liberty and happiness of my country, and I believe every member of that Convention was actuated by motives equally sincere and patriotic.

He says that it will tend to aristocracy. Where is the aristocratical part of it? It is ideal. I always thought that an aristocracy was that government where the few governed the many, or where the rulers were hereditary. This is a very different government from that. I never read of such an aristocracy. The first branch are Representatives chosen freely by the people at large. This must be allowed upon all hands to be democratical. The next is the Senate, chosen by the people in a secondary manner through the medium of their delegates in the Legislature. This cannot be aristocratical. They are chosen for six years, but one third of them go out every second year, and are responsible to the state Legislatures. The President is elected for four years. By whom? By those who are elected in such manner as the state Legislatures think proper. I hope the gentleman will not pretend to call this an aristocratical feature. The privilege of representation is secured in the most positive and unequivocal terms, and cannot be evaded. The gentleman has again brought on the trial by jury. The Federal Convention, Sir, had no wish to destroy the trial by jury. It was three or four days before them. There were a variety of objections to any one mode. It was thought impossible to fall upon any one mode, but what would produce some inconveniences. I cannot now recollect all the reasons given. Most of them have been amply detailed by other gentlemen here. I should

should suppose, that if the Representatives of twelve States, with many able lawyers among them, could not form any unexceptionable mode, this Convention could hardly be able to do it. As to the subject of religion, I thought what has been said would fully satisfy that gentleman and every other. No power is given to the general government to interfere with it at all. Any act of Congress on this subject would be an usurpation. No sect is preferred to another. Every man has a right to worship the Supreme Being in the manner he thinks proper. No test is required. All men of equal capacity and integrity, are equally eligible to offices. Temporal violence might make mankind wicked, but never religious. A test would enable the prevailing sect to persecute the rest. I do not suppose an Infidel, or any such person, will ever be chosen to any office unless the people themselves be of the same opinion. He says that Congress may establish ecclesiastical courts. I do not know what part of the Constitution warrants that assertion. It is impossible. No such power is given them. The gentleman advises such amendments as would satisfy him, and proposes a mode of amending before ratifying. If we do not adopt first, we are no more a part of the union than any foreign power. It will be also throwing away the influence of our state to propose amendments as the condition of our ratification. If we adopt first, our Representatives will have a proportionable weight in bringing about amendments, which will not be the case if we do not adopt. It is adopted by ten states already. The question then is, not whether the Constitution be good, but whether we will or will not confederate with the other states. The gentleman supposes that the liberty of the press is not secured. The Constitution does not take it away. It says nothing of it, and can do nothing to injure it. But it is secured by the Constitution of every state in the union in the most ample manner.

He objects to giving the government exclusive legislation in a district not exceeding ten miles square, although the previous consent and cession of the state within which it may be, is required. Is it to be supposed, that the Representatives of the people will make regulations therein dangerous to liberty? Is there the least colour or pretext for saying, that the militia will be carried and kept there

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for life? Where is there any power do this? The power of calling forth the militia is given for the common defence, and can we suppose that our own Representatives, chosen for so short a period, will dare to pervert a power, given for the general protection, to an absolute oppression. But the gentleman has gone further, and says, that any man who will complain of their oppressions, or write against their usurpations, may be deemed a traitor, and tried as such in the ten miles square, without a jury. What an astonishing misrepresentation! Why did not the gentleman look at the Constitution, and see their powers? Treason is there defined. It says expressly, that treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. Complaining therefore, or writing, cannot be treason. [Here Mr. *Lenoir* rose, and said that he meant misprision of treason.] The same reasons hold against that too. The liberty of the press being secured, creates an additional security. Persons accused cannot be tried without a jury; for the same article provides, that "the trial of all crimes shall be by jury." They cannot be carried to the ten miles square; for the same clause adds, "and such trial shall be held in the state where the said crimes shall have been committed." He has made another objection, that land might not be taxed, and the other taxes would fall heavily on the poor people. Congress has a power to lay taxes, and no article is exempted or excluded. The proportion of each state may be raised in the most convenient manner. The census or enumeration provided, is meant for the salvation and benefit of the southern states. It was mentioned that land ought to be the only object of taxation. As an acre of land in the northern states, is worth many acres in the southern states, this would have greatly oppressed the latter. It was then judged that the number of people, as therein provided, was the best criterion for fixing the proportion of each state, and that proportion in each state to be raised in the most easy manner for the people. But he has started another objection, which I never heard before; that Congress may call for men in proportion to the number of negroes. The article with respect to requisitions of men is entirely done away. Men are to be raised by bounty. Suppose it had not been done away.

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The eastern states could not impose on us a man for every black. It was not the case during the war, nor ever could be. But quotas of men are entirely done away.

Another objection which he makes, is, that the Federal Courts will have cognizance of contracts between this state and citizens of another state, and that public securities, negotiated by our citizens to those of other states will be recoverable in specie in those courts against this state. They cannot be negotiated. What do these certificates say? Merely that the person therein named, shall for a particular service, receive so much money. They are not negotiable. The money must be demanded for them in the name of those therein mentioned. No other person has a right. There can be no danger therefore in this respect. The gentlemen has made several other objections, but they have been so fully answered and clearly refuted by several gentlemen in the course of the debates, that I shall pass them by unnoticed. I cannot however conclude, without observing, that I am amazed he should call the powers of the general government indefinite. It is the first time I heard the objection. I will venture to say they are better defined than the powers of any government he ever heard of.

Mr. J. McDowall—Mr. Chairman, I was in hopes that amendments would have been brought forward to the Constitution, before the idea of adopting it had been thought of or proposed. From the best information, there is a great proportion of the people in the adopting states averse to it as it stands. I collect my information from respectable authority. I know the necessity of a federal government, I therefore wish this was one in which our liberties and privileges were secured. For I consider the union as the rock of our political salvation. I am for the strongest federal government. A bill of rights ought to have been inserted to ascertain our most valuable and unalienable rights.

The fourth section of the first clause gives the Congress an unlimited power over elections. This matter was not cleared up to my satisfaction. They have full power to alter it from one time of the year to another, so as that it shall be impossible for the people to attend. They may fix the time in winter, and the place at Edenton,
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when the weather will be so bad that the people cannot attend. The state governments will be mere boards of election. The clause of elections gives the Congress power over the time and manner of choosing the Senate. I wish to know why reservation was made of the place and time of choosing Senators, and not also of electing Representatives. It points to the time when the states shall be all consolidated into one empire. Trial by jury is not secured. The objections against this want of security have not been cleared up in a satisfactory manner. It is neither secured in civil nor criminal cases. The federal appellate cognizance of law and fact, puts it in the power of the wealthy to recover unjustly of the poor man, who is not able to attend at such extreme distance, and bear such enormous expence as it must produce. It ought to be limited so as to prevent such oppressions.

I say the trial by jury is not sufficiently secured in criminal cases. The very intention of the trial by jury is, that the accused may be tried by persons who come from the vicinage or neighbourhood, who may be acquainted with his character. The substance therefore of this privilege is taken away.

By the power of taxation every article capable of being taxed, may be so heavily taxed that the people cannot bear the taxes necessary to be raised for the support of their state governments. Whatever law we may make, may be repealed by their laws. All these things, with others, tend to make us one general empire. Such a government cannot be well regulated. When we are connected with the northern states, who have a majority in their favour, laws may be made which will answer their convenience, but will be oppressive to the last degree upon the southern states. They differ in climate, soil, customs, manners, &c. A large majority of the people of this country are against this Constitution, because they think it replete with dangerous defects. They ought to be satisfied with it before it is adopted, otherwise it cannot operate happily. Without the affections of the people it will not have sufficient energy. To enforce its execution recourse must be had to arms and bloodshed. How much better would it be if the people were satisfied with it? From all these considerations I now rise to oppose its adoption; for I never will agree to a government that tends to the destruction of the liberty of the people.

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Mr. *Wilson* wished that the Constitution had excluded Popish Priests from offices. As there was no test required, and nothing to govern them but honour, he said, that when their interest clashed with their honour, the latter would fly before the former.

Mr. *Lancaster*—Mr. Chairman, It is of the utmost importance to decide this great question with candour and deliberation. Every part of this Constitution has been elucidated. It has been asserted by several worthy gentlemen, that it is the most excellent Constitution that ever was formed. I could wish to be of that opinion if it were so. The powers vested therein are very extensive. I am apprehensive that the power of taxation is unlimited. It expressly says, that Congress shall have the power to lay taxes, &c. It is obvious to me that the power is unbounded, and I am apprehensive that they may lay taxes too heavily on our lands, in order to render them more productive. The amount of the taxes may be more than our lands will sell for. It is obvious that the lands in the northern states, which gentlemen suppose to be more populous than this country, are more valuable and better cultivated than ours: Yet their lands will be taxed no higher than our lands. A rich man there, from reports, does not possess so large a body of land as a poor man to the southward. If so, a common poor man here, will have much more to pay for poor land, than the rich man there for land of the best quality. This power, being necessarily unequal and oppressive, ought not to be given up. I shall endeavour to be as concise as possible. We find that the ratification of nine states shall be sufficient for its establishment between the states so ratifying the same. This, as has been already taken notice of, is a violation of the Confederation. We find that by that system, no alteration was to take place, except it was ratified by every state in the union. Now by comparing this last article of the Constitution to that part of the Confederation, we find a most flagrant violation. The articles of Confederation were sent out with all solemnity on so solemn an occasion, and were to be always binding on the states; but, to our astonishment, we see that nine states may do away the force of the whole. I think, without exaggeration, that it will be looked upon by foreign nations, as a serious and alarming change.

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How do we know that if we propose amendments they shall be obtained after actual ratification? May not these amendments be proposed with equal propriety, and more safety, as the condition of our adoption? If they violate the thirteenth article of the Confederation in this manner, may they not with equal propriety refuse to adopt amendments, although agreed to and wished for by two-thirds of the states? This violation of the old system is a precedent for such proceedings as these. That would be a violation destructive to our felicity. We are now determining a question deeply affecting the happiness of millions yet unborn. It is the policy of freemen to guard their privileges. Let us then as far as we can exclude the possibility of tyranny. The President is chosen for four years. The Senators for six years. Where is our remedy for the most flagrant abuses? It is thought that North-Carolina is to have an opportunity of choosing one-third of their senatorial Members, and all their Representatives, once in two years. This would be the case as to the Senators, if they should be of the first class: but at any rate, it is to be after six years. But if they deviate from their duty, they cannot be excluded and changed the first year, as the Members of Congress can now by the Confederation. How can it be said to be safe to trust so much power in the hands of such men, who are not responsible or amenable for misconduct?

As it has been the policy of every state in the union to guard elections, we ought to be more punctual in this case. The Members of Congress now may be recalled. But in this Constitution they cannot be recalled. The continuance of the President and Senate is too long. It will be objected by some gentlemen, that if they are good, why not continue them? But I would ask, how are we to find out whether they be good or bad? The individuals who assented to any bad law are not easily discriminated from others. They will, if individually enquired of, deny that they gave it their approbation; and it is in their power to conceal their transactions as long as they please.

There is also the President's conditional negative on the laws. After a bill is presented to him and he disapproves of it, it is to be sent back to that House where it originated,

ated, for their consideration. Let us consider the effects of this for a few moments. Suppose it originates in the Senate, and passes there by a large majority: Suppose it passes in the House of Representatives unanimously—it must be transmitted to the President. If he objects, it is sent back to the Senate; if two-thirds do not agree to it in the Senate, what is the consequence? Does the House of Representatives ever hear of it afterwards? No, it drops, because it must be passed by two thirds of both Houses, and as only a majority of the Senate agreed to it it cannot become a law. This is giving a power to the President to over-rule fifteen Members of the Senate and every Member in the House of Representatives. These are my objections. I look upon it to be unsafe to drag each other from the most remote parts in the state, to the Supreme Federal Court, which has appellate jurisdiction of causes arising under the Constitution, and of controversies between citizens of different states. I grant that if it be a contract between a citizen of Virginia and a citizen of North-Carolina, the suit must be brought here; but may they not appeal to the Supreme Court, which has cognizance of law and fact? They may be carried to Philadelphia. They ought to have limited the sum on which appeal should lie. They may appeal on a suit for only ten pounds. Such a trifling sum as this, would be paid by a man who thought he did not owe it, rather than go such a distance. It would be prudence in him so to do. This would be very oppressive.

I doubt my own judgment—experience has taught me to be diffident—but I hope to be excused and put right if I be mistaken.

The power of raising armies is also very exceptionable. I am not well acquainted with the government of other countries, but a man of any information knows that the King of Great-Britain cannot raise and support armies. He may call for and raise men, but he has no money to support them. But Congress is to have power to raise and support armies. Forty thousand men from North-Carolina could not be refused without violating the Constitution. I wish amendments to these parts. I agree it is not our business to enquire whether the continent be invaded or not. The General Legislature ought to superintend the

care of this. Treaties are to be the supreme law of the land. This has been sufficiently discussed—it must be amended some way or the other. If the Constitution be adopted, it ought to be the supreme law of the land, and a perpetual rule for the governors and governed. But if treaties are to be the supreme law of the land, it may repeal the laws of different states, and render nugatory our bill of rights. As to a religious test, had the article which excludes it, provided that none should be required, but what had been required in the states heretofore, I would not have objected to it. It would secure religion. Religious liberty ought to be provided for. I acquiesce with the gentleman who spoke on this point my sentiments better than I could have done myself. For my part, in reviewing the qualifications necessary for a President, I did not suppose that the Pope could occupy the President's chair. But let us remember that we form a government for millions not yet in existence. I have not the art of divination. In the course of four or five hundred years, I do not know how it will work. This is most certain, that Papists may occupy that chair, and Mahometans may take it. I see nothing against it. There is a disqualification I believe in every state in the union—it ought to be so in this system. It is said that all power not given is retained. I find they thought proper to insert negative clauses in the Constitution, restraining the general government from the exercise of certain powers. These were unnecessary if the doctrine be true, that every thing not given is retained. From the insertion of these we may conclude the doctrine to be fallacious. Mr. *Lancaster* then observed, that he would disapprove of the Constitution as it then stood. His own feelings and his duty to his constituents induced him to do so. Some people, he said, thought a Delegate might act independently of the people. He thought otherwise, and that every Delegate was bound by their instructions, and if he did any thing repugnant to their wishes he betrayed his trust. He thought himself bound by the voice of the people, whatever other gentlemen might think. He would cheerfully agree to adopt if he thought it would be of general utility, but as he thought it would have a contrary effect, and as he believed a great majority of the people were against it, he would oppose its adoption.

Mr.

Mr. *Willie Jones* was against ratifying in the manner proposed. He had attended, he said, with great patience to the debates of the speakers on both sides of the question. One party said the Constitution was all perfection. The other party said it wanted a great deal of perfection. For his part, he thought so. He treated the dangers which were held forth in case of non adoption, as merely ideal and fanciful. After adding other remarks, he moved that the previous question might be put, with an intention, as he said, if that was carried, to introduce a resolution which he had in his hand, and which he was then willing to read if gentlemen thought proper, stipulating for certain amendments to be made previous to the adoption by this state.

Governor *Johnston* begged gentlemen to recollect, that the proposed amendments could not be laid before the other states unless we adopted and became part of the union.

Mr. *Taylor* wished that the previous question might be put as it would save much time. He feared the motion first made was a manœuvre or contrivance to impose a Constitution on the people, which a majority disapproved of.

Mr. *Iredell* wished the previous question should be withdrawn, and that they might debate the first question. The great importance of the subject, and the respectability of the gentleman who made the motion, claimed more deference and attention than to decide it in the very moment it was introduced by getting rid of it by the previous question. A decision was now presented in a new form by a gentleman of great influence in the House, and gentlemen ought to have time to consider before they voted precipitately upon it.

A desultory conversation now arose. Mr. *J. Galloway* wished the question to be postponed till to-morrow morning.

Mr. *J. McDowall* was for immediately putting the question.—Several gentlemen expatiated on the evident necessity of amendments.

Governor *Johnston* declared, that he disdained all manœuvres and contrivance; that an intention of imposing an improper system on the people, contrary to their wishes, was unworthy of any man. He wished the motion to be fairly and fully argued and investigated. He observed,
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that the very motion before them proposed amendments to be made. That they were proposed as they had been in other states. He wished therefore that the motion for the previous question should be withdrawn.

Mr. *Willie Jones* could not withdraw his motion. Gentlemen's arguments, he said, had been listened to attentively, but he believed no person had changed his opinion. It was unnecessary then to argue it again. His motion was not conclusive. He only wished to know what ground they stood on, whether they should ratify it unconditionally or not.

Mr. *Spencer* wished to hear the arguments and reasons for and against the motion. Although he was convinced the House wanted amendments, and that all had nearly determined the question in their own minds, he was for hearing the question argued, and had no objection to the postponement of it till to-morrow.

Mr. *Iredell* urged the great importance of consideration. That the consequence of the previous question, if carried, would be an exclusion of this state out of the union. He contended that the House had no right to make a conditional ratification, and if excluded from the union, they could not be assured of an easy admission at a future day, though the impossibility of existing out of the union must be obvious to every thinking man. The gentleman from Halifax had said, that his motion would not be conclusive. For his part, he was certain it would be tantamount to an immediate decision. He trusted gentlemen would consider the propriety of debating the first motion at large.

Mr. *Person* observed, that the previous question would produce no inconvenience. The other party, he said, had all the debating to themselves, and would probably have it again, if they insisted on further argument. He saw no propriety in putting it off till to-morrow, as it was not customary for a committee to adjourn with two questions before them.

Mr. *Shepherd* declared, that though he had made up his mind, and believed other gentlemen had done so, yet he had no objection to giving gentlemen an opportunity of displaying their abilities, and convincing the rest of their error if they could. He was for putting it off till to-morrow.

Mr. *Davie* took notice that the gentleman from *Granville* had frequently used ungenerous insinuations, and had taken much pains out of doors to irritate the minds of his countrymen against the Constitution. He called upon gentlemen to act openly and above board, adding that a contrary conduct on this occasion, was extremely despicable. He came thither, he said, for the common cause of his country, and knew no party, but wished the business to be conducted with candour and moderation. The previous question he thought irregular, and that it ought not to be put till the other question was called for. That it was evidently intended to preclude all further debate, and to precipitate the committee upon the resolution which it had been suggested was immediately to follow, which they were not then ready to enter upon. That he had not fully considered the consequences of a conditional ratification, but at present they appeared to him alarmingly dangerous, and perhaps equal to those of an absolute rejection.

Mr. *Willie Jones* observed, that he had not intended to take the House by surprise: That though he had his motion ready, and had heard of the motion which was intended for ratification, he waited till that motion should be made, and had afterwards waited for some time, in expectation that the gentleman from *Halifax*, and the gentleman from *Edenton*, would both speak to it. He had no objection to adjourning, but his motion would be still before the House.

Here there was a great cry for the question.

Mr. *Iredell*, [The cry for the question still continuing.] Mr. Chairman, I desire to be heard, notwithstanding the cry of "the question, the question." Gentlemen have no right to prevent any Member from speaking to it if he thinks fit. [The House subsided into order.] Unimportant as I may be myself, my constituents are as respectable as those of any Member in the House. It has indeed, Sir, been my misfortune to be under the necessity of troubling the House much oftener than I wished, owing to a circumstance which I have greatly regretted, that so few gentlemen take a share in our debates, though many are capable of doing so with propriety. I should have spoken to the question at large before, if I had not fully depended on some other gentleman doing it, and therefore I did not prepare myself by
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taking notes of what was said. However, I beg leave now to make a few observations. I think this Constitution safe. I have not heard a single objection which in my opinion shewed that it was dangerous. Some particular parts have been objected to, and amendments pointed out. Though I think it perfectly safe, yet with respect to any amendments which do not destroy the substance of the Constitution, but will tend to give greater satisfaction, I should approve of them, because I should prefer that system which would most tend to conciliate all parties. On these principles I am of opinion, that some amendments should be proposed.

The general ground of the objections seems to be, that the powers proposed to the general government, may be abused. If we give no power but such as may not be abused, we shall give none; for all delegated powers may be abused. There are two extremes equally dangerous to liberty. These are *tyranny* and *anarchy*. The medium between these two is the true government to protect the people. In my opinion, this Constitution is well calculated to guard against both these extremes. The possibility of general abuses ought not to be urged, but particular ones pointed out. A gentleman who spoke some time ago [Mr. Lenoir] observed that the government might make it treason to write against the most arbitrary proceedings. He corrected himself afterwards, by saying he meant *misprision of treason*. But in the correction he committed as great a mistake as he did at first. Where is the power given to them to do this? They have power to define and punish piracies and felonies committed on the high seas, and offences against the law of nations. They have no power to define any other crime whatever. This will shew how apt gentlemen are to commit mistakes. I am convinced on the part of the worthy Member, it was not designed, but arose merely from inattention.

Mr. *Lenoir* arose and declared, that he meant that those punishments might be inflicted by them within the ten miles square, where they would have exclusive powers of legislation.

Mr. *Iredell* continued—They are to have exclusive power of legislation; but how? Wherever they may have this district, they must possess it from the authority of the
state

state within which it lies: And that state may stipulate the conditions of the cession. Will not such state take care of the liberties of its own people. What would be the consequence if the seat of the government of the United States, with all the archives of America, was in the power of any one particular state? Would not this be most unsafe and humiliating? Do we not all remember that in the year 1783, a band of soldiers went and insulted Congress? The sovereignty of the United States was treated with indignity. They applied for protection to the state they resided in, but could obtain none. It is to be hoped such a disgraceful scene will never happen again, but that for the future the national government will be able to protect itself. The powers of the government are particularly enumerated and defined: they can claim no others but such as are so enumerated. In my opinion they are excluded as much from the exercise of any other authority as they could be by the strongest negative clause that could be framed. A gentleman has asked, what would be the consequence if they had the power of the purse and sword? I ask, in what government under Heaven are these not given up to some authority or other? There is a necessity of giving both the purse and the sword to every government, or else it cannot protect the people. But have we not sufficient security that those powers shall not be abused? The immediate power of the purse is in the immediate Representatives of the people, chosen every two years, who can lay no tax on their constituents but what they are subject to at the same time themselves. The power of taxation must be vested somewhere. Do the committee wish it to be as it has been? Then they must suffer the evils which they have done. Requisitions will be of no avail. No money will be collected but by means of military force. Under the new government taxes will probably be much lighter than they can be under our present one. The impost will afford vast advantages, and greatly relieve the people from direct taxation. In time of peace it is supposed by many the imposts may be alone sufficient: But in time of war, it cannot be expected they will. Our expences would be much greater, and our ports might be blocked up by the enemy's fleet. Think then of the advantage of a national government possessed of energy and credit. Could
government

government borrow money to any advantage without the power of taxation? If they could secure funds, and wanted immediately for instance 100,000l. they might borrow this sum, and immediately raise only money to pay the interest of it. If they could not, the 100,000l. must be instantly raised however distressing to the people, or our country perhaps over-run by the enemy. Do not gentlemen see an immense difference between the two cases? It is said that there ought to be jealousy in mankind. I admit it as far as is consistent with prudence. But unlimited jealousy is very pernicious. We must be contented if powers be as well guarded as the nature of them will permit. In regard to amending before or after adoption, the difference is very great. I beg leave to state my idea of that difference. I mentioned one day before, the adoption by ten states. When I did so, it was not to influence any person with respect to the merits of the Constitution, but as a reason for coolness and deliberation. In my opinion, when so great a majority of the American people have adopted it, it is a strong evidence in its favour: For it is not probable that ten states would have agreed to a bad Constitution. If we do not adopt, we are no longer in the union with the other states. We ought to consider seriously before we determine our connection with them. The safety and happiness of this state depend upon it. Without that union what would have been our condition now? A striking instance will point out this very clearly: At the beginning of the late war with Great-Britain, the Parliament thought proper to stop all commercial intercourse with the American provinces. They passed a general prohibitory act, from which New-York and North-Carolina were at first excepted. Why were they excepted? They had been as active in opposition as the other states; but this was an expedient to divide the northern from the middle states, and to break the heart of the southern. Had New-York and North-Carolina been weak enough to fall into this snare, we probably should not now have been an independent people. [Mr. *Person* called to order, and intimated that the gentleman meant to reflect on the opposers of the Constitution, as if they were friendly to the British interest. Mr. *Iredell* warmly resented the interruption, declaring he was perfectly in order, that it was disorderly

orderly to interrupt him, and in respect to Mr. *Person's* insinuation as to his intention, he declared in the most solemn manner he had no such, being well assured the opposers of the Constitution were equally friendly to the independence of America, as its supporters. He then proceeded.] I say, they endeavoured to divide us. North-Carolina and New-York had too much sense to be taken in by their artifices. Union enabled us then to defeat all their endeavours: Union will enable us to defeat all the machinations of our enemies hereafter. The friends of their country must lament our present unhappy divisions. Most free countries have lost their liberties by means of dissensions among themselves. They united in war and danger: When peace and apparent security came, they split into factions and parties, and thereby became a prey to foreign invaders. This shews the necessity of union. In urging the danger of disunion so strongly, I beg leave again to say, that I mean not to reflect on any gentleman whatsoever, as if his wishes were directed to so wicked a purpose. I am sure such an insinuation as the gentleman from Granville supposed I intended, would be utterly unjust, as I know some of the warmest opposers of Great-Britain, are now among the warmest opponents of the proposed Constitution. Such a suggestion never entered into my head, and I can say with truth, that warmly as I am attached to this Constitution, and though I am convinced that the salvation of our country depends upon the adoption of it, I would not procure it success by one unworthy action or one ungenerous word. A gentleman has said that we ought to determine in the same manner as if no state had adopted the Constitution. The general principle is right, but we ought to consider our peculiar situation. We cannot exist by ourselves. If we imitate the examples of some respectable states that have proposed amendments subsequent to their ratification, we shall add our weight to have these amendments carried, as our Representatives will be in Congress to enforce them. Gentlemen entertain a jealousy of the eastern states. To withdraw ourselves from the southern states, will be increasing the northern influence. The loss of one state may be attended with particular prejudice. It will be a good while before amendments of any kind can take place,

and in the mean time if we do not adopt we shall have no share or agency in their transactions, though we may be ultimately bound by them. The first session of Congress will probably be the most important of any for many years. A general code of laws will then be established in execution of every power contained in the Constitution. If we ratify and propose amendments, our Representatives will be there to act in this important business. If we do not our interest may suffer, nor will the system be afterwards altered merely to accommodate our wishes. Besides that, one House may prevent a measure from taking place, but both must concur in repealing it. I therefore think an adoption proposing subsequent amendments, far safer and more desirable than the other mode. Nor do I doubt that every amendment, not of a local nature, nor injuring essentially the material powers of the Constitution, but principally calculated to guard against misconstruction, the real liberties of the people, will be readily obtained.

The previous question, after some desultory conversation, was now put. For it 183. Against it 84.—Majority in favour of the motion 99.

Mr. President now resumed the chair, and Mr. Kenan reported, that the committee had come to some resolutions on the subject referred to their consideration, but not having time to reduce them to form, desired leave to sit again.

Resolved, That the committee have leave to sit again to-morrow.

The Convention then adjourned until to-morrow morning nine o'clock.

T H U R S D A Y, J U L Y 31, 1788.

The Convention met according to adjournment, and resolved itself, according to the order of the day, into a committee of the whole Convention.—Mr. Kenan in the chair.

Governor *Johnston*—Mr. Chairman, It appears to me, that if the motion made yesterday by the gentleman from Halifax, be adopted, it will not answer the intention of the people. It determines nothing with respect to the Constitution. We were sent here to determine upon it. [Here his Excellency read the resolution of the Assembly under which the Convention met.] If we do not decide upon the

the Constitution, we shall have nothing to report to Congress. We shall be entirely out of the union, and stand by ourselves. I wish gentlemen would pause a moment before they decide so awful a question. To whom are we to refer these amendments which are to be proposed as the condition of our adoption? The present Congress have nothing to do with them. Their authority extends only to introduce the new government, not to receive any proposition of amendments. Shall we present them to the new Congress? In what manner can that be done? We shall have no Representatives to introduce them. We may indeed appoint Ambassadors to the United States of America to represent what scruples North-Carolina has in regard to their Constitution. I know no other way. A number of states have proposed amendments to the Constitution, and ratified in the mean time. These will have great weight and influence in Congress, and may prevail in getting material amendments proposed. We shall have no share in voting upon any of these amendments, for in my humble opinion, we shall be entirely out of the union, and can be considered only as a foreign power. It is true the United States may admit us hereafter. But they may admit us on terms unequal and disadvantageous to us. In the mean time many of their laws, by which we shall be hereafter bound, may be particularly injurious to the interests of this state, as we shall have no share in their formation. Gentlemen say, they will not be influenced by what others have done. I must confess that the examples of great and good men, and wise states, has great weight with me. It is said there is a probability that New-York will not adopt this Constitution. Perhaps she may not.— But it is generally supposed, that the principal reason of her opposing it, arises from a selfish motive. She has it now in her power to tax indirectly two contiguous states, Connecticut and New-Jersey contribute to pay a great part of the taxes of that state, by consuming large quantities of goods, the duties of which are now levied for the benefit of New-York only. A similar policy may induce the United States to lay restrictions on us if we are out of the union. These considerations ought to have great weight with us. We can derive very little assistance from any thing New-York will do on our behalf. Her views

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are diametrically opposite to ours. That state wants all her imposts for her own exclusive support. It is our interest that all imposts should go into the general treasury. Should Congress receive our commissioners, it will be a considerable time before this business will be decided on. It will be some time after Congress meets, before a Convention is appointed, and some time will elapse before the Convention meets. What they will do will be transmitted to each of the states, and then a Convention or the Legislature in each state will have to ratify it ultimately.— This will probably take up eighteen months or two years. In the mean time the national government is going on.— Congress will appoint all the great officers, and will proceed to make laws and form regulations for the future government of the United States. This state during all that time will have no share in their proceedings or any negative on any business before them. Another inconvenience which will arise, is this—we shall be deprived of the benefit of the impost, which under the new government is an additional fund; all the states having a common right to it.— By being in the union we should have a right to our proportionate share of all duties and imposts collected in all the states. But by adopting this resolution, we shall lose the benefit of this; which is an object worthy of attention. Upon the whole I can see no possible good that will result to this state from following the resolution before us. I have not the vanity to think that any reasons I offer will have any weight. But I came from a respectable county to give my reasons for or against the Constitution. They expect them from me, and to suppress them would be a violation of my duty.

Mr. Willie Jones—Mr. Chairman, The gentleman last up has mentioned the resolution of Congress now lying before us, and the act of Assembly under which we met here, which says that we should deliberate and determine on the Constitution. What is to be inferred from that? Are we to ratify it at all events? Have we not an equal right to reject? We do determine by neither rejecting nor adopting. It is objected we shall be out of the union. So I wish to be. We are left at liberty to come in at any time. It is said we shall suffer a great loss, for want of a share of the impost. I have no doubt we shall have it

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when we come in, as much as if we adopted now. I have a resolution in my pocket, which I intend to introduce if this resolution is carried, recommending it to the Legislature to lay an impost for the use of Congress on goods imported into this state, similar to that which may be laid by Congress on goods imported into the adopting states. This shews the committee what is my intention, and on what footing we are to be. This being the case, I will forfeit my life that we shall come in for a share. It is said that all the offices of Congress will be filled, and we shall have no share in appointing the officers. This is an objection of very little importance. Gentlemen need not be in such haste. If left eighteen months or two years without offices it is no great cause of alarm. The gentleman further said, that we could send no Representatives, but must send Ambassadors to Congress as a foreign power. I assert the contrary, and that whenever a Convention of the states is called, North-Carolina will be called upon like the rest. I do not know what these gentlemen would desire. I am very sensible that there is a great majority against the Constitution. If we take the question as they propose, they know it would be rejected, and bring on us all the dreadful consequences which they feelingly foretell, but which can never in the least alarm me. I have endeavoured to fall in with their opinions, but could not. We have a right in plain terms to refuse it, if we think proper. I have in my proposition adopted word for word the Virginia amendments, with one or two additional ones. We run no risk of being excluded from the union when we think proper to come in. Virginia our next neighbour will not oppose our admission. We have a common cause with her. She wishes the same alterations. We are of the greatest importance to her. She will have great weight in Congress, and there is no doubt but she will do every thing she can to bring us into the union. South Carolina and Georgia are deeply interested in our being admitted. The creek nation would overturn these two states without our aid. They cannot exist without North-Carolina. There is no doubt we shall obtain our amendments and come into the union when we please. Massachusetts, New-Hampshire and other states have proposed amendments. New-York will do so also if she ratifies. There will

will be a majority of the states, and the most respectable, important and extensive states also, desirous of amendments, and favourable to our admission. As great names have been mentioned, I beg leave to mention the authority of Mr. Jefferson, whose great abilities and respectability are well known. When the Convention sat in Richmond, in Virginia, Mr. Madison received a letter from him. In that letter he said he wished nine states would adopt it; not because it deserved ratification, but to preserve the union. But he wished that the other four states would reject it, that there might be a certainty of obtaining amendments. Congress may go on and take no notice of our amendments. But I am confident they will do nothing of importance till a Convention be called. If I recollect rightly, the Constitution may be ratified either by Conventions or the Legislatures of the states. In either case it may take up about eighteen months. For my own part, I would rather be eighteen years out of the union than adopt it in its present defective form.

Governor *Johnston*—Mr. Chairman, I wish to clear myself from the imputation of the gentleman last up. If any part of my conduct warrants his aspersions, if ever I hunted after offices or sought public favours to promote private interest—let the instances be pointed out. If I know myself—I never did. It is easy for any man to throw out illiberal and ungenerous insinuations. I have no view to offices under this Constitution. My views are much humbler. When I spoke of Congress establishing offices, I meant great offices, the establishment of which might affect the interest of the states; and I added that they would proceed to make laws, deeply affecting us, without any influence of our own. As to the appointment of the officers, it is of no importance to me who is an officer, if he be a good man.

Mr. *Jones* replied, that in every publication one might see ill motives assigned to the opposers of the Constitution. One reason assigned for their opposition, was, that they feared the loss of their influence, and diminution of their importance. He said that it was fair its opposers should be permitted to retort, and assign a reason equally selfish, for the conduct of its friends. Expectation to offices might influence them, as well as the loss of office and influence might bias the others. He intended no allusion

to that gentleman, for whom he declared he had the highest respect.

Mr. *Spencer* rose in support of the motion of the gentleman from Halifax. He premised, that he wished no resolution to be carried without the utmost deliberation and candour. He thought the proposition was couched in such modest terms as could not possibly give offence to the other states. That the amendments it proposed were to be laid before Congress, and would probably be admitted, as they were similar to those which were wished for and proposed by several of the adopting states. He always thought it more proper and agreeable to prudence to propose amendments previous rather than subsequent to ratification. He said that if two or more persons entered into a co-partnership, and employed a scrivener to draw up the articles of co-partnership in a particular form, and on reading them, they found them to be erroneous, it would be thought very strange if any of them should say, "Sign it first, and we shall have it altered hereafter." If it should be signed before alteration, it would be considered as an act of indiscretion. As therefore, it was a principle of prudence in matters of private property, not to assent to any obligation till its errors were removed, he thought the principle infinitely more necessary to be attended to in a matter which concerned such a number of people, and so many millions yet unborn. Gentlemen said they should be out of the union. He observed, that they were before confederated with the other states by a solemn compact, which was not to be dissolved without the consent of every state in the union. North-Carolina had not assented to its dissolution. If it was dissolved it was not their faults, but that of the adopting states. It was a maxim of law that the same solemnities were necessary to destroy which were necessary to create a deed or contract. He was of opinion, that if they should be out of the union by proposing previous amendments, they were as much so now. If the adoption by nine states enabled them to exclude the other four states, he thought North-Carolina might then be considered as excluded. But he did not think that doctrine well founded. On the contrary, he thought each state might come into the union when she thought proper. He confessed it gave him some concern

concern, but he looked on the short exclusion of eighteen months, if it might be called exclusion, as infinitely less dangerous than an unconditional adoption. He expected the amendments would be adopted, and when they were, this state was ready to embrace it. No great inconvenience could result from this. Mr. *Spencer* made some other remarks, but spoke too low to be heard.

Mr. *Iredell*—Mr. Chairman, In my opinion this is a very awful moment. On a right decision of this question may possibly depend the peace and happiness of our country for ages. Whatever be the decision of the House on this subject, it ought to be well weighed before it is given. We ought to view our situation in all its consequences, and determine with the utmost caution and deliberation. It has been suggested, not only out of doors, but during the course of the debates, that if we are out of the union, it will be the fault of other states and not ours. It is true, that by the Articles of the Confederation, the consent of each state was necessary to any alteration. It is also true, that the consent of nine states renders this Constitution binding on them. The unhappy consequences of that unfortunate article in this Confederation, produced the necessity of this article in the Constitution. Every body knows, that through the peculiar obstinacy of Rhode-Island many great advantages were lost. Notwithstanding her weakness, she uniformly opposed every regulation for the benefit and honour of the union at large. The other states were then driven to the necessity of providing for their own security and welfare, without waiting for the consent of that little state. The Deputies from twelve states unanimously concurred in opinion, that the happiness of all America ought not to be sacrificed to the caprice and obstinacy of so inconsiderable a part. It will often happen in the course of human affairs, that the policy which is proper on common occasions fails; and that laws which do very well in the regular administration of a government, cannot stand when every thing is going into confusion. In such a case, the safety of the community must supersede every other consideration, and every subsisting regulation which interferes with that must be departed from rather than that the people should be ruined. The Convention therefore, with a degree of
manliness

manliness which I admire, dispensed with an unanimous consent for the present change, and at the same time provided a permanent remedy for this evil, not barely by dispensing with the consent of one member in future alterations, but by making the consent of nine sufficient for the whole if the rest did not agree, considering that the consent of so large a number ought in reason to govern the whole; and the proportion was taken from the old Confederation, which in the most important cases required the consent of nine; and in every thing except the alteration of the Constitution, made that number sufficient. It has been objected, that the adoption of this government would be improper, because it would interfere with the oath of allegiance to the state. No oath of allegiance requires us to sacrifice the safety of our country. When the British government attempted to establish a tyranny in America, the people did not think their oath of allegiance bound them to submit to it. I had taken that oath several times myself; but had no scruple to oppose their tyrannical measures. The great principle is, *The safety of the people is the supreme law*. Government was originally instituted for their welfare, and whatever may be its form; this ought to be its object. This is the fundamental principle on which our government is founded. In other countries they suppose the existence of an original compact; and infer, that if the sovereign violates his part of it, the people have a right to resist. If he does not, the government must remain unchanged unless the sovereign consents to an alteration. In America, our governments have been clearly created by the people themselves. The same authority that created can destroy, and the people may undoubtedly change the government, not because it is ill exercised, but because they conceive another form will be more conducive to their welfare. I have stated the reasons for departing from the rigid article in the Confederation requiring an unanimous consent. We were compelled to do this or see our country ruined. In the manner of the dispensation the Convention however appear to have acted with great prudence, in copying the example of the Confederation in all other particulars of the greatest moment, by authorising nine states to bind the whole. It is suggested indeed, that though ten states have adopted this new Constitution,

yet as they had no right to dissolve the old articles of Confederation, these still subsist, and the old union remains, of which we are a part. The truth of that suggestion may well be doubted on this ground. When the principles of a Constitution are violated, the Constitution itself is dissolved, or may be dissolved at the pleasure of the parties to it. Now, according to the articles of Confederation, Congress had authority to demand money in a certain proportion from the respective states to answer the exigencies of the union. Whatever requisitions they made for that purpose, were constitutionally binding on the states. The states had no discretion except as to the mode of raising the money. Perhaps every state has committed repeated violations of the demands of Congress. I do not believe it was from any dishonourable intention in many of the states; but whatever was the cause, the fact is, such violations were committed. The consequence is, that upon the principle I have mentioned (and in which I believe all writers agree) the articles of Confederation are no longer binding. It is alledged, that by making the consent of nine sufficient to form a government for themselves, the first nine may exclude the other four. This is a very extraordinary allegation. When the new Constitution was proposed, it was proposed to the thirteen states in the union. It was desired, that all should agree if possible, but if that could not be obtained, they took care that nine states might at least save themselves from destruction. Each undoubtedly had a right on the first proposition, because it was proposed to them all. The only doubt can be, whether they had a right afterwards. In my opinion, when any state has once rejected the Constitution, it cannot claim to come in afterwards as a matter of right. If it does not in plain terms reject, but refuses to accede for the present, I think the other states may regard this as an absolute rejection, and refuse to admit us afterwards but at their pleasure and on what terms they please. Gentlemen wish for amendments. On this subject, though we may differ as to the necessity of amendments, I believe none will deny the propriety of proposing some, if only for the purpose of giving more general satisfaction. The question then is, whether it is most prudent for us to come into the union immediately and propose amendments (as has
been

been done in the other states) or to propose amendments and be out of the union till all these be agreed to by the other states. The consequences of either resolution I beg leave to state. By adopting we shall be in the union with our sister states, which is the only foundation of our prosperity and safety. We shall avoid the danger of a separation, a danger of which the latent effects are unknown. So far am I convinced of the necessity of the union, that I would give up many things against my own opinion to obtain it. If we sacrifice it, by a rejection of the Constitution, or a refusal to adopt (which amounts, I think, nearly to the same thing) the very circumstance of disunion may occasion animosity between us and the inhabitants of the other states, which may be a means of severing us forever. We shall lose the benefit which must accrue to the other states from the new government. Their trade will flourish: Goods will sell cheap: Their commodities will rise in value, and their distresses occasioned by the war will gradually be removed. Ours, for want of these advantages, will continue. Another very material consequence will result from it: We shall lose our share of the imposts in all the states, which under this Constitution are to go into the federal treasury. It is the particular local interest of this state to adopt on this account, more perhaps than that of any other member of the union. At present all these imposts go into the respective treasury of each state, and we well know our own are of little consequence compared to those of the other states in general. The gentleman from Halifax [Mr. Jones] has offered an expedient to prevent the loss of our share of the impost. In my opinion that expedient will not answer the purpose. The amount of duties on goods imported into this state is very little, and if these resolutions are agreed to it will be less. I ask any gentleman, whether the United States would receive from the duties of this state so much as would be our proportion under the Constitution, of the duties on goods imported in all the states. Our duties would be no manner of compensation for such proportion. What would be the language of Congress on our holding forth such an offer? "If you are willing to enjoy the benefits of the union, you must be subject to all the laws of it. We will make no partial agreement with you"

This

This would probably be their language. I have no doubt all America would wish North-Carolina to be a member of the union. It is of importance to them. But we ought to consider whether ten states can do longer without one, or one without ten? On a competition, which will give way? The adopting states will say, "Other states had objections as well as you, but rather than separate they agreed to come into the union, trusting to the justice of the other states for the adoption of proper amendments afterwards. One most respectable state, Virginia, has pursued this measure, though apparently averse to the system as it now stands. But you have laid down the condition on which alone you will come into the union. We must accede to your particular propositions, or be disunited from you altogether. Is it fit that North-Carolina shall dictate to the whole union? We may be convinced by your reason, but our conduct will certainly not be altered by your resistance." I beg leave to say, if Virginia thought it right to adopt and propose amendments, under the circumstances of the Constitution at that time, surely it is much more so for us in our present situation. That state, as was justly observed, is a most powerful and respectable one. Had she held out, it would have been a subject of most serious alarm. But she thought the risk of losing the union altogether too dangerous to be incurred. She did not then know of the ratification by New-Hampshire. If she thought it necessary to adopt, when only eight states had ratified, is it not much more necessary for us after the ratification by ten? I do not say that we ought servilely to imitate any example. But I may say, that the examples of wise men, and intelligent nations, are worthy of respect; and that in general we may be much safer in following than in departing from them. In my opinion, as many of the amendments proposed, are similar to amendments recommended not only by Virginia, but by other states, there is a great probability of their being obtained. All the amendments proposed undoubtedly will not be, nor I think ought to be, but such as tend to secure more effectually the liberties of the people, against an abuse of the powers granted, in all human probability, will; for in such amendments all the states are equally interested. The probability of such amendments being

being obtained is extremely great, for though three states ratified the Constitution unanimously, there has been a considerable opposition in the other states. In New-Hampshire the majority was small. In Massachusetts there was a strong opposition. In Connecticut the opposition was about one third; so it was in Pennsylvania. In Maryland the minority was small, but very respectable. In Virginia they had little more than a bare majority. There was a powerful minority in South-Carolina. Can any man pretend to say, that thus circumstanced, the states would disapprove of amendments calculated to give satisfaction to the people at large? There is a very great probability, if not an absolute certainty, that amendments will be obtained. The interest of North-Carolina would add greatly to the scale in their favour. If we do not accede we may injure the states who wish for amendments, by withdrawing ourselves from their assistance. We are not at any event in a condition to stand alone. God forbid we should be a moment separated from our sister states. If we are, we shall be in great danger of a separation forever. I trust every gentleman will pause before he contributes to so awful an event. We have been happy in our connexion with the other states. Our freedom, independence, every thing dear to us, has been derived from that union we are now going rashly to dissolve. If we are to be separated; let every gentleman well weigh the ground he stands on before he votes for the separation. Let him not have to reproach himself hereafter that he voted without due consideration, for a measure that proved the destruction of his country.

Mr. *Iredell* then observed, that there were insinuations thrown out against those who favoured the Constitution—that they had a view of getting offices and emoluments. He said, he hoped no man thought him so wicked, as to sacrifice the interest of his country to private views. He declared in the most solemn manner, the insinuation was unjust and ill-founded as to himself. He believed it was so with respect to the rest. The interest and happiness of his country solely governed him on that occasion. He could appeal to some Members in the House, and particularly to those who knew him in the lower part of the country, that his disposition had never been pecuniary, and that he had never aspired to offices. At the beginning of the
revolution,

revolution, he said, he held one of the best offices in the state under the crown—an office on which he depended for his support. His relations were in Great-Britain; yet though thus circumstanced, so far was he from being influenced by pecuniary motives, or emoluments of office, that as soon as his situation would admit of it, he did not hesitate a moment to join the opposition to Great-Britain, nor would the richest office in America have tempted him to adhere in that unjust cause to the British government. He apologised for taking up the time of the committee, but he observed that reflections of that kind were considered as having applied, unless they were taken notice of. He attributed no unworthy motives to any gentleman in the House. He believed most of them wished to pursue the interest of their country according to their own ideas of it. He hoped other gentlemen would be equally liberal.

Mr. *Willie Jones* observed, that he assigned unworthy motives to no one. He thought a gentleman had insinuated, that the opposition all acted from base motives. He was well assured that their motives were as good as those of the other party, and he thought he had a right to retort by shewing that selfish views might influence as well on one side as the other. He intended however no particular reflections on those two gentlemen, who had applied the observation to themselves, for whom he said he had the highest respect, and was sorry he had made the observation as it had given them pain. But if they were conscious that the observation did not apply to them, they ought not to be offended at it. He then explained the nature of the resolutions he proposed; and the plain question was, whether they should adopt them or not.—He was not afraid that North-Carolina would not be admitted at any time hereafter. Maryland, he observed, had not confederated for many years with the other states; yet she was considered in the mean time as a member of the union, was allowed as such to send her proportion of men and money, and was at length admitted into the confederacy in 1781. This he said shewed how the adopting states would act on the present occasion. North-Carolina might come into the union when she pleased.

Governor *Johnston* made some observations as to the particular case of Maryland, but in too low a voice to be distinctly heard.

Mr.

Mr. *Bloodworth* observed, that the first Convention which met to consult on the necessary alterations of the Confederation, so as to make it efficient, and put the commerce of the United States on a better footing, not consisting of a sufficient number from the different states, so as to authorize them to proceed, returned without effecting any thing; but proposed that another Convention should be called, to have more extensive powers, to alter and amend the Confederation. This proposition of that Convention was warmly opposed in Congress.—Mr. King, from Massachusetts, insisted on the impropriety of the measure, and that the existing system ought to stand as it was. His arguments, he said, were, that it might destroy the Confederation to propose alterations; that the unanimous consent of all the states was necessary to introduce those alterations, which could not possibly be obtained; and that it would therefore be in vain to attempt it. He wondered how gentlemen came to entertain different opinions now. He declared he had listened with attention, to the arguments of the gentlemen on the other side, and had endeavoured to remove every kind of bias from his mind, yet he had heard nothing of sufficient weight to induce him to alter his opinion. He was sorry that there was any division on that important occasion, and wished they could all go hand in hand.

As to the disadvantages of a temporary exclusion from the union, he thought them trifling. He asked if a few political advantages could be put in competition with our liberties. Gentlemen said that amendments would probably be obtained. He thought their arguments and reasons were not so sure a method to obtain them as withholding their consent would be. He could not conceive that the adopting states would take any measures to keep this state out of the union. If a right view were taken of the subject, he said they could not be blamed in staying out of the union till amendments were obtained. The compact between the states was violated by the other states and not by North-Carolina. Would the violating party blame the upright party? This determination would correspond with the opinion of the gentleman who had written from France on the subject. He would lay stress on no man's opinion, but the opinion of that gentleman was very respectable.

Mr.

Mr. *Davis*—Mr. Chairman, It is said that there is a great majority against the Constitution and in favour of the gentleman's proposition. The object of a majority, I suppose, is to pursue the most probable method of obtaining amendments. The honourable gentleman from Halifax has said this is the most eligible method of obtaining them. My opinion is the very reverse; let us weigh the probability of both modes proposed, and determine with candour which is the safest and surest method of obtaining the wished for alterations. The honourable gentleman from Anson, has said that our conduct in adhering to these resolutions, would be *modest*. What is his idea or definition of modesty? The term must be very equivocal; so far from being modest, it appears to me to be no less than an arrogant dictatorial proposal of a Constitution, to the United States of America. We shall be no part of that confederacy, and yet attempt to dictate to one of the most powerful confederacies in the world. It is also said to be most agreeable to *prudence*; if our real object be amendments, every man must agree that the most likely means of them are the most *prudent*. Four of the most respectable states have adopted the Constitution, and recommended amendments, New-York (if she refuses to adopt) Rhode-Island, and North-Carolina, will be the only states out of the union. But if these three were added, they would compose a majority in favour of amendments, and might by various means, compel the other states into the measure. It must be granted that there is no way of obtaining amendments but the mode prescribed in the Constitution; two thirds of the Legislatures of the states *in the confederacy*, may require Congress to call a Convention to propose amendments, or the same proportion of both Houses may propose them. It will then be of no consequence that we stand out and propose amendments; without adoption we are not a member of the confederacy, and possessing no federal rights, can neither make any proposition nor require Congress to call a Convention. Is it not clear, however strange it may be, that we are with-holding our weight from those states who are of our own opinion, and by a perverse obstinacy obstructing the very measure we wish to promote. If two thirds of both Houses are necessary to send forward amendments to the states, would it not be prudent

prudent we that should be there and add our vote to the number of those states who are of the same sentiment? The honourable Member from Anson has likened this business to a copartnership, comparing small things to great. The comparison is only just in one respect—the dictatorial proposal of North-Carolina to the American confederacy, is like a beggarly bankrupt addressing an opulent company of merchants, and arrogantly telling them, “I wish to be in copartnership with you, but “the terms must be such as *I please*.” What has North-Carolina to put into the stock with the other states? Have we not felt our poverty? What was the language of Congress on their last requisition on this state? Surely gentlemen must remember the painful terms in which our delinquency was treated. That gentleman has also said, “that we shall still be a part of the union, and if we be “separated it is not our fault.” This is an obvious solecism. It is our *own fault*, Sir, and the direct consequence of the means we are now pursuing. North-Carolina stands foremost in point of delinquency, and has repeatedly violated the Confederation. The conduct of this state has been among the principal causes which produced this revolution in our federal government. The honourable gentleman has also added, that it was a rule in law, “that the same solemnities were necessary to annul which “were necessary to create or establish a compact, and that “as thirteen states created, so thirteen states must concur “in the dissolution of the Confederation.” This may be talking like a lawyer or a judge, but it is very *unlike* a politician; a majority is the rule of republican decisions. It was the voice of a majority of the people of America that gave that system validity, and the same authority can and will annul it at any time. Every man of common sense knows, that political power is *political right*. Lawyers may cavil and quibble about the necessity of unanimity, but the true principle is otherwise. In every republican community the majority binds the minority, and whether confederated or separated the principle will equally apply. We have a right to come into the union, until we exercise the right of deciding on the question referred to us. Adoption places us in the union—rejection extinguishes the *right* forever. The scheme proposed by these gentlemen will certainly be considered as an absolute rejection; it may

amuse the people and answer a purpose *here*, but will not answer any purpose *there*. The honourable gentleman from Halifax asserts, " we may come in when we please." The gentleman from New-Hanover, on the same side of the question, endeavoured to alarm and frighten us about the dangerous influence of the eastern states; if he deserves any credit, can we expect they will let us into the union, until they have accomplished their particular views, and then but on the most disadvantageous terms? Commercial regulations will be one of the great objects of the first session of Congress, in which our interests will be totally neglected. Every man must be convinced of the importance of the first acts and regulations; as they will probably give a tone to the policy of ages yet to come, and this scheme will add greatly to the influence of the eastern states, and proportionably diminish the power and interests of the southern states.

The gentleman says he has a project in his pocket, which he risks his life will induce the other states to give us a share of the general impost. I am fully satisfied, Sir, this project will not answer the purpose, and the forfeiture of his life will be no compensation for irretrievable public loss. Every man who knows the resources of our commerce, and our situation, will be clearly convinced that the project cannot succeed—the whole produce of our duties, both by land and water is very trifling. For several years past it has not exceeded 10,000 l. of our own paper money. It will not be more, probably less, if we are out of the union. The whole proportion of this state of the public debts, except this mere pittance, must be raised from the people by direct and immediate taxation. But the fact is, Sir, it cannot be raised, because it cannot be paid; and without sharing in the general impost we shall never discharge our quota of the federal debt. What does he offer the other states? The poor pittance I have mentioned. Can we suppose Congress so lost to every sense of duty, interest and justice?—Would their constituents permit them to put their hands into their pockets to pay *our debts*? We have no equivalent to give them for it. As several powerful states have proposed amendments, they will no doubt be supported with zeal and perseverance, so that it is not probable that the object of amendments will be lost. We

may struggle on for a few years and render ourselves wretched and contemptible, but we must at last come into the union on their terms however humiliating they may be. The project on the table is little better than an absolute rejection, and is neither rational or politic as it cannot promote the end proposed.

Mr. *Lock*, in reply to Mr. *Davie*, expressed some apprehensions that the Constitution, if adopted as it then stood, would render the people poor and miserable. He thought it would be very productive of expences. The advantages of the impost he considered as of little consequence, as he thought all the money raised that way, and more, would be swept away by courtly parade—the emoluments of the President, and other members of the government, the Supreme Court, &c. These expences would double the impost in his opinion. They would render the states bankrupt. The imposts, he imagined, would be inconsiderable. The people of America began to import less foreign frippery. Every wise planter was fond of home manufacture. The northern states manufactured considerably, and he thought manufactures would encrease daily. He thought a previous ratification dangerous. The worst that could happen would be, that we should be thrown out of the union. He would rather that should be the case, than embrace a tyrannical government, and give away our rights and privileges. He was therefore determined to vote for the resolutions of the gentleman from Halifax.

Mr. *Spencer* observed, that if the conduct of North-Carolina would be immodest and dictatorial, in proposing amendments, and if it was proposing a constitution to the other states, he was sure the other states who had proposed the same amendments, were equally guilty of immodesty and dictating a constitution to the other states. The only difference being, that this state does not adopt previously. The gentleman had objections to *his* legal maxims, and said they were not politic. He would be extremely sorry, he said, if the maxims of justice should not take place in politics. Were this to be the case, there could be no faith put in any compact. He thought the comparison of the state to a beggar was a degradation of it, and insisted on the propriety of his own comparison; which he thought obvious.

obvious to any one. He acknowledged that an exclusion from the union would be a most unhappy circumstance, but he had no idea that it would be the case. As this mode of proceeding would hasten the amendments, he could not but vote for it.

Mr. *Jones* defined the word *modesty* by contrasting it with its antagonist *impudence*. The gentleman found fault with the observation, that this was the most decent and best way of obtaining amendments. If gentlemen would propose a more eligible method, he would consent to that. He said the gentleman had reviled the state by his comparison, and must have hurt the feelings of every gentleman in the House. He had no apprehensions that the other states would refuse to admit them into the union, when they thought proper to come in. It was their interest to admit them. He asked if a beggar would refuse a boon though it were but a shilling, or if twelve men struggling under a heavy load would refuse the assistance of a thirteenth man?

A desultory conversation now took place.

Mr. *Davie* hoped they would not take up the whole collectively, but that the proposed amendments would be considered one by one. Some other gentlemen expressed the same desire.

Many other gentlemen thought the resolution very proper as it stood.

The question being put, the resolution was agreed to by a great majority of the committee.

It was then resolved that the committee should rise. Mr. President resumed the chair, and Mr. *Kenan* reported from the committee of the whole Convention, that the committee had again had the Constitution proposed for the future government of the United States under consideration, and had come to a resolution thereupon; which he read in his place, and afterwards delivered in at the Clerk's table.

Ordered, That the said report lie on the table until tomorrow morning nine o'clock: To which time the House adjourned.

FRIDAY,

FRIDAY, AUGUST 1, 1788.

The Convention met according to adjournment.

Mr. *Iredell*—Mr. President, I believe, Sir, all debate is now at an end. It is useless to contend any longer against a majority that is irresistible. We submit, with the deference that becomes us, to the decision of the majority; but my friends and myself are anxious that something may appear on the journal to shew our sentiments on the subject. I have therefore a resolution in my hand to offer, not with a view of creating any debate, (for I know it will be instantly rejected) but merely that it may be entered on the journal, with the yeas and nays taken upon it, in order that our constituents and the world may know what our opinions really were on this important occasion. We prefer this to the exceptionable mode of a protest, which might increase the spirit of party, and raise animosity among the people of this country, which is an event we wish to prevent, if possible. I therefore, Sir, have the honour of moving,

“That the consideration of the report of the committee be postponed, in order to take up the consideration of the following resolution.”

Mr. *Iredell* then read the resolution in his place, and afterwards delivered it in at the Clerk's table, and his motion was seconded by Mr. John Skinner.

Mr. *Joseph M'Dowall* and several other gentlemen, most strongly objected against the propriety of this motion. They thought it improper, unprecedented, and a great contempt of the voice of the majority.

Mr. *Iredell* replied that he thought it perfectly regular, and by no means a contempt of the majority. The sole intention of it was, to shew the opinion of the minority, which could not, in any other manner, be so properly done. They wished to justify themselves to their constituents, and the people at large would judge between the merit of the two propositions. They wished also to avoid, if possible, the disagreeable alternative of a protest. This being the first time he ever had the honour of being a Member of a representative body, he did not solely confide in his own judgment as to the proper manner of bringing his resolution forward, but had consulted a very respectable and experienced Member of that House, who

had recommended this method to him ; and he well knew it was conformable to a frequent practice in Congress, as he had observed by their journals. Each Member had an equal right to make a motion, and if seconded, a vote ought to be taken upon it, and he trusted the majority would not be so arbitrary as to prevent them from taking this method to deliver their sentiments to the world.

He was supported by Mr. *MacLaine* and Mr. *Spaight*.

Mr. *Willie Jones* and Mr. *Spencer* insisted on its being irregular—and said they might protest. Mr. *Jones* said, there never was an example of the kind before ; that such a practice did not prevail in Congress when he was a Member of it, and he well knew no such practice had ever prevailed in the Assembly.

Mr. *Davie* said, he was sorry that gentlemen should not deal fairly and liberally with one another. He declared it was perfectly Parliamentary, and the usual practice in Congress. They were in possession of the motion, and could not get rid of it without taking a vote upon it. It was in the nature of a previous question. He declared that nothing hurt his feelings so much as the blind tyranny of a dead majority.

After a warm discussion of this point by several gentlemen on both sides of the House, it was at length intimated to Mr. *Iredell*, by Mr. *Spaight*, across the house, that Mr. *Lenoir* and some other gentlemen of the majority, wished he would withdraw his motion for the present, on purpose that the resolution of the committee might be first entered on the journal, which had not been done ; and afterwards his motion might be renewed. Mr. *Iredell* declared he would readily agree to this, if the gentleman who had seconded him would, desiring the House to remember that he only withdrew his motion for that reason, and hoped he should have leave to introduce it afterwards. Which seemed to be understood. He accordingly, with the consent of Mr. *Skinner*, withdrew his motion. And the resolution of the committee of the whole House was then read, and ordered to be entered on the journal. The resolution was accordingly read and entered as follows, *viz.*

Resolved, That a Declaration of Rights, asserting and securing from encroachment the great principles of civil and religious liberty, and the unalienable rights of the people, together with amendments to the most ambiguous and exceptionable parts of the said Constitution of government,

ment; ought to be laid before Congress, and the Convention of the states that shall or may be called for the purpose of amending the said Constitution, for their consideration, previous to the ratification of the Constitution aforesaid on the part of the state of North-Carolina.

DECLARATION OF RIGHTS.

1st. That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity, among which are the enjoyment of life and liberty, with the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

2d. That all power is naturally vested in, and consequently derived from the people; that magistrates therefore are their trustees and agents, and at all times amenable to them.

3d. That government ought to be instituted for the common benefit, protection and security of the people; and that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive to the good and happiness of mankind.

4th. That no man or set of men are entitled to exclusive or separate public emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator or judge, or any other public office to be hereditary.

5th. That the legislative, executive and judiciary powers of government should be separate and distinct, and that the members of the two first may be restrained from oppression, by feeling and participating the public burthens, they should at fixed periods be reduced to a private station, return into the mass of the people, and the vacancies be supplied by certain and regular elections; in which all or any part of the former members to be eligible or ineligible, as the rules of the constitution of government and the laws shall direct.

6th. That elections of representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with, and attachment to the community, ought to have the right of suffrage; and no aid, charge, tax or fee can be set, rated or levied upon the people without their own consent, or that of their representatives so elected; nor can they be bound by any law to which they have not in like manner assented for the public good.

7th. That all power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people in the legislature, is injurious to their rights and ought not to be exercised.

8th. That in all capital and criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence, and be allowed counsel in his favour, and to a fair and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty (except in the government of the land and naval forces) nor can he be compelled to give evidence against himself.

9th. That no freeman ought to be taken, imprisoned, or disseised of his freehold, liberties, privileges or franchises, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the law of the land.

10th. That every freeman restrained of his liberty, is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same if unlawful; and that such remedy ought not to be denied nor delayed.

11th. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is one of the greatest securities to the rights of the people, and ought to remain sacred, and inviolable.

12th. That every freeman ought to find a certain remedy by recourse to the laws for all injuries and wrongs he may receive in his person, property or character; he ought to obtain right and justice freely without sale, completely and without denial, promptly and without delay, and that all establishments or regulations contravening these rights, are oppressive and unjust.

13th. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

14th. That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers and property; all warrants therefore to search suspected places, or to apprehend any suspected person without specially naming or describing the place or person, are dangerous and ought not to be granted.

15th. That the people have a right peaceably to assemble together to consult for the common good, or to instruct their representatives; and that every freeman has a right to petition or apply to the legislature for redress of grievances.

16th. That the people have a right to freedom of speech, and of writing and publishing their sentiments; that the freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.

17th. That the people have a right to keep and bear arms; that a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural and safe defence of a free state. That standing armies in time of peace, are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that in all cases, the military should be under strict subordination to, and governed by, the civil power.

18th. That no soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the laws direct.

19th. That any person religiously scrupulous of bearing arms ought to be exempted, upon payment of an equivalent to employ another to bear arms in his stead.

20th. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right to the free exercise of religion, according to the dictates of conscience; and that no particular religious sect or society ought to be favoured or established by law in preference to others.

AMENDMENTS to the CONSTITUTION.

I. That each state in the union shall respectively retain every power, jurisdiction and right, which is not by this constitution delegated to the Congress of the United States, or to the departments of the federal government,

II.

II. That there shall be one representative for every 30,000, according to the enumeration or census mentioned in the constitution, until the whole number of representatives amounts to two hundred; after which that number shall be continued or encreased as Congress shall direct, upon the principles fixed in the constitution, by apportioning the representatives of each state to some greater number of people, from time to time, as population encreases.

III. When Congress shall lay direct taxes or excises, they shall immediately inform the executive power of each state, of the quota of such state, according to the census herein directed, which is proposed to be thereby raised: And if the legislature of any state shall pass a law, which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected in such state.

IV. That the members of the senate and house of representatives shall be ineligible to, and incapable of, holding any civil office under the authority of the United States, during the time for which they shall respectively be elected.

V. That the journals of the proceedings of the senate and house of representatives shall be published at least once in every year, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy.

VI. That a regular statement and account of receipts and expenditures of all public monies shall be published at least once in every year.

VII. That no commercial treaty shall be ratified without the concurrence of two-thirds of the whole number of the members of the senate: And no treaty, ceding, contracting, restraining or suspending the territorial rights or claims of the United States, or any of them, or their, or any of their rights, or claims to fishing in the American seas, or navigating the American rivers, shall be made, but in cases of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrence of three-fourths of the whole number of the members of both houses respectively.

VIII. That no navigation law, or law regulating commerce, shall be passed without the consent of two-thirds of the members present in both houses.

IX. That no standing army or regular troops shall be raised or kept up in time of peace, without the consent of two-thirds of the members present in both houses.

X. That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.

XI. That each state respectively shall have the power to provide for organizing, arming and disciplining its own militia whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, except when in actual service in time of war, invasion or rebellion: And when not in the actual service of the United States, shall be subject only to such fines, penalties and punishments as shall be directed or inflicted by the laws of its own state.

XII. That Congress shall not declare any state to be in rebellion, without the consent of at least two-thirds of all the members present of both houses.

XIII. That the exclusive power of legislation given to Congress over
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the federal town and its adjacent district, and other places purchased, or to be purchased by Congress of any of the states, shall extend only to such regulations as respect the police and good government thereof.

XIV. That no person shall be capable of being president of the United States for more than eight years in any term of sixteen years.

XV. That the judicial power of the United States shall be vested in one supreme court, and in such courts of admiralty as Congress may from time to time ordain and establish in any of the different states. The judicial power shall extend to all cases in law and equity, arising under treaties made, or which shall be made under the authority of the United States; to all cases affecting ambassadors, other foreign ministers and consuls; to all cases of admiralty, and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, and between parties claiming lands under the grants of different states; in all cases affecting ambassadors, other foreign ministers and consuls, and those in which a state shall be a party; the supreme court shall have original jurisdiction in all other cases before mentioned; the supreme court shall have appellate jurisdiction as to matters of law only, except in cases of equity, and of admiralty and maritime jurisdiction, in which the supreme court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make: But the judicial power of the United States shall extend to no case where the cause of action shall have originated before the ratification of this constitution, except in disputes between states about their territory; disputes between persons claiming lands under the grants of different states, and suits for debts due to the United States.

XVI. That in criminal prosecutions, no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the jury.

XVII. That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse or be disabled by invasion or rebellion, to prescribe the same.

XVIII. That those clauses which declare that Congress shall not exercise certain powers, be not interpreted in any manner whatsoever to extend the powers of Congress; but that they be construed either as making exceptions to the specified powers where this shall be the case, or otherwise, as inserted merely for greater caution.

XIX. That the laws ascertaining the compensation of senators and representatives, for their services, be postponed in their operation until after the election of representatives immediately succeeding the passing thereof, that excepted which shall first be passed on the subject.

XX. That some tribunal, other than the senate, be provided for trying impeachments of senators.

XXI. That the salary of a judge shall not be encreased or diminished during his continuance in office, otherwise than by general regulations of salary, which may take place on a revision of the subject at stated periods of not less than seven years, to commence from the time such salaries shall be first ascertained by Congress.

XXII. That Congress erect no company of merchants with exclusive advantages of commerce.

XXIII. That no treaties which shall be directly opposed to the existing

ing laws of the United States in Congress assembled shall be valid, until such laws shall be repealed, or made conformable to such treaty; nor shall any treaty be valid which is contradictory to the constitution of the United States.

XXIV. That the latter part of the 5th paragraph of the 9th section of the first article be altered to read thus—Nor shall vessels bound to a particular state be obliged to enter or pay duties in any other; nor when bound from any one of the states be obliged to clear in another.

XXV. That Congress shall not directly or indirectly, either by themselves or through the judiciary, interfere with any one of the states in the redemption of paper money already emitted and now in circulation, or in liquidating and discharging the public securities of any one of the states, but each and every state shall have the exclusive right of making such laws and regulations for the above purposes as they shall think proper.

XXVI. That Congress shall not introduce foreign troops into the United States without the consent of two-thirds of the members present of both houses.

Mr. *Spencer* then moved that the report of the committee be concurred with, and was seconded by Mr. *Joseph M. Dowall*.

Mr. *Iredell* moved, “That the consideration of that motion be postponed, in order to take into consideration the following resolution.”

(Which resolution was the same he introduced before, and which he afterwards, in substance, moved by way of amendment.)

This gave rise to a very warm altercation on both sides, during which the House was in great confusion. Many gentlemen in the majority (particularly Mr. *Willie Jones*) strongly contended against the propriety of the motion. Several gentlemen in the minority resented in strong terms the arbitrary attempt of the majority (as they termed it) to suppress their sentiments; and Mr. *Spaight*, in particular, took notice, with great indignation, of the motion made to concur with the committee, when the gentleman from Edenton appeared in some measure to have had the faith of the House, that he should have an opportunity to renew his motion, which he had withdrawn at the request of some of the majority themselves. Mr. *Whitmill Hill* spoke with great warmth, and declared that in his opinion, if the majority persevered in their tyrannical attempt, the minority should secede.

Mr. *Willie Jones* still contended that the motion was altogether irregular and improper, and made a motion calculated to shew that such a motion, made and seconded under the circumstances in which it had been introduced, was not entitled to be entered on the journal. His motion
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being seconded, was carried by a great majority. The yeas and nays were moved for, and were taken, when Mr. *Iredell* arose, and said, he was sensible of the irregularity he was guilty of, and hoped he should be excused for it, but it arose from his desire of saving the House trouble. That Mr. *Jones* (he begged pardon for naming him) had proposed an expedient to him, with which he should be perfectly satisfied, if the House approved of it, as it was indifferent to him what was the mode, if his object in substance was obtained. The method proposed was, that the motion for concurrence should be withdrawn, and his resolution should be moved by way of amendment. If the House therefore approved of this method, and the gentlemen who had moved and seconded the motion would agree to withdraw it, he hoped it would be deemed unnecessary to proceed with the yeas and nays.

Mr. *Nathan Bryan* said, the gentleman treated the majority with contempt. Mr. *Iredell* declared he had no such intention, but as the yeas and nays were taken on a difference between both sides of the House, which he hoped might be accommodated, he thought he might be excused for the liberty he had taken.

Mr. *Spencer* and Mr. *M'Dowall*, after some observations not distinctly heard, accordingly withdrew their motion; and it was agreed that the yeas and nays should not be taken, nor the motion which occasioned them entered on the journal. Mr. *Iredell* then moved as follows, *viz.*

That the report of the committee be amended, by striking out all the words of the said report except the two first, *viz.* "Resolved, That," and that the following words be inserted in their room, *viz.*

This convention having fully deliberated on the constitution proposed for the future government of the United States of America by the federal convention, lately held at Philadelphia, on the 17th day of September last, and having taken into their serious and solemn consideration the present critical situation of America, which induces them to be of opinion, that though certain amendments to the said constitution may be wished for, yet that those amendments should be proposed subsequent to the ratification on the part of this state, and not previous to it; They do therefore, on behalf of the state of North-Carolina, and the good people thereof, and by virtue of the authority to them delegated, ratify the said constitution on the part of this state: And they do at the same time recommend, that as early as possible, the following amendments to the said constitution may be proposed for the consideration and adoption of the several states in the union, in one of the modes prescribed by the fifth article thereof.

AMENDMENTS.

A M E N D M E N T S.

I. Each state in the union shall respectively retain every power, jurisdiction and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the general government; nor shall the said Congress, or any department of the said government, exercise any act of authority over any individual in any of the said states, but such as can be justified under some power, particularly given in this constitution; but the said constitution shall be considered at all times a solemn instrument defining the extent of their authority, and the limits of which they cannot rightfully in any instance exceed.

II. There shall be one representative for every thirty thousand, according to the enumeration or census, mentioned in the constitution, until the whole number of representatives amounts to two hundred; after which that number shall be continued or encreased as Congress shall direct, upon the principles fixed in the constitution, by apportioning the representatives of each state to some greater number of people, from time to time, as population encreases.

III. Each state respectively shall have the power to provide for organizing, arming and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same. The militia shall not be subject to martial law, except when in actual service in time of war, invasion or rebellion; and when they are not in the actual service of the United States, they shall be subject only to such fines, penalties and punishments as shall be directed or inflicted by the laws of its own state.

IV. The Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse or be disabled by invasion, or rebellion, to prescribe the same.

V. The laws ascertaining the compensation of senators and representatives for their services, shall be postponed in their operation, until after the election of representatives immediately succeeding the passing thereof; that excepted, which shall first be passed on the subject.

VI. Instead of the following words in the 9th section of the 1st article, *viz.* "Nor shall vessels bound to or from one state, be obliged to enter, clear or pay duties in another:" [The meaning of which is by many deemed not sufficiently explicit:] It is proposed that the following shall be substituted: "No vessel bound to one state shall be obliged to enter or pay duties to which such vessel may be liable at any port of entry, in any other state than that to which such vessel is bound: Nor shall any vessel bound from one state, be obliged to clear or pay duties to which such vessel may be liable at any port of clearance, in any other state than that from which such vessel is bound."

He was seconded by Mr. John Skinner.

The question was then put, "Will the Convention adopt that amendment or not?" And it was negatived: Whereupon Mr. Iredell moved that the yeas and nays should be taken, and he was seconded by Mr. Steele. They were accordingly taken, and were as follow:

YEAS—His Excellency Samuel Johnston, Esq. President, Messrs. James Iredell, Archibald Maclaine, Nathan Keais, John G. Blount, Thomas Alderson, John Johnston, Andrew Oliver, Goodwin Elliston, Charles

Charles M'Dowall, Richard D. Spaight, William I. Dawson, James Porterfield, William Barry Grove, George Elliott, Wallis Styron, William Shepperd, *Carteret*, James Phillips, John Humphries, Michael Payne, Charles Johnson, Stephen Cabarrus, Edmund Blount, *Chowan*, Henry Abbot, Isaac Gregory, Peter Dauge, Charles Grandy, Enoch Sawyer, George Lucas, John Willis, John Cade, Elias Barnes, Neil Brown, James Winchester, William Stokes, Thomas Stewart, Josiah Collins, Thomas Hines, Nathaniel Jones, John Steele, William R. Davie, Joseph Reddick, James Gregory, Thomas Hunter, *Gates*, Thomas Wyns, Abraham Jones, John Eborne, James Jasper, Caleb Foreman, Seth Hovey, John Sloan, John Moore, William MacLaine, Nathan Mayo, William Slade, William M'Kenzie, Robert Irwin, John Lane, Thomas Reading, Edward Everagain, Enoch Relfe, Devotion Davis, William Skinner, Joshua Skinner, Thomas Hervey, John Skinner, Samuel Harrel, Joseph Leech, Wm. Bridges, William Burden, Edmund Blount, *Tyrrel*, Simpson Spruil, David Tanner, Whitmill Hill, Benjamin Smith, John Sitgreaves, Nathaniel Allen, Thomas Owen, George Wyns, David Perkins, Joseph Ferebee, William Ferebee, William Baker, and Abner Neale.—84.

NAYS—Messrs. Willie Jones, Samuel Spencer, Lewis Lanier, Thomas Wade, Daniel Gould, James Bonner, Alexius M. Foster, Lewis Dupree, Thomas Brown, James Greenlee, Joseph M'Dowall, Robert Miller, Benjamin Williams, Richard Nixon, Thomas Armstrong, Alexander M'Allister, Robert Dickins, George Roberts, John Womack, Ambrose Ramsey, James Anderson, Jos. Stewart, William Vestal, Thomas Evans, Thomas Hardiman, Robert Weakley, William Donnellson, William Dobins, Robert Diggs, Bythel Bell, Elisha Battle, William Fort, Etheld. Gray, William Lancaster, Thomas Sherrod, John Norwood, Sterling Dupree, Robert Williams, Richard Moye, Arthur Forbes, David Caldwell, William Goudy, Daniel Gillespie, John Anderson, John Hamilton, Thomas Person, Joseph Taylor, Thornton Yancey, Howell Lewis, jun. E. Mitchell, George Moore, George Ledbetter, William Porter, Zebedee Wood, Edmund Waddell, James Galloway, John Regan, Joseph Winston, James Gains, Charles M'Annelly, Abfalom Bostick, John Scott, John Dunkin, David Dodd, Curtis Ivey, Lewis Holmes, Richard Clinton, Hardy Holmes, Robert Alison, James Stewart, John Tipton, John Macon, Thomas Christmalls, Henry Montfort, William Taylor, James Hanley, Britain Saunders, William Lenoir, Richard Allen, John Brown, Jos. Herndon, James Fletcher, Lemuel Burkit, William Little, Thomas King, Nathan Bryan, John H. Bryan, Edward Whitty, Robert Alexander, James Johnson, John Cox, John Carrel, Corn. Doud, Thomas Tyson, William Martin, Thomas Hunter, *Martin*, John Graham, William ~~Boon~~, William Kindal, Thomas Uffery, Thomas Butler, John Bentford, James Vaughan, Robert Peebles, James Vinson, William S. Marnes, Howell Ellin, Redman Bunn, John Bonds, David Pridgen, Daniel Yates, Thomas Johnston, John Spicer, A. Tatom, Alexander Mebane, William Mebane, William M'Cauley, William Shepperd, *Orange*, Jonathan Linley, Wyatt Hawkins, James Payne, John Graves, John Blair, Joseph Tipton, William Bethell, Abraham Phillips, John May, Charles Galloway, James Boswell, John M'Allister, David Looney, John

John Sharpe, Joseph Gaitier, John A. Campbell, John Pugh Williams, William Marshall, Charles Robertson, James Gillespie, Charles Ward, William Randal, Frederick Harget, Richard M'Kinnie, John Cains, Jacob Leonard, Thomas Carson, Richard Singleton, James Whitfield, Caleb Phifer, Zachias Wilson, Joseph Douglas, Thomas Dougan, James Kenan, John Jones, Egbert Haywood, William Wootten, John Branch, Henry Hill, Andrew Bass, Joseph Boon, William Farmer, John Bryan, Edward Williams, Francis Oliver, Matthew Brooks, Griffith Rutherford, George H. Barringer, Timothy Bloodworth, Everet Pearce, Asahel Rawlins, James Wilson, James Roddy, Samuel Cain, Benj. Covington, Joseph M'Dowall jun. Durham Hall, James Bloodworth, Joel Lane, James Hinton, Thomas Devane, James Brandon, William Dickson, Burwell Moor-ing, Matthew Lock, and Stokely Donelson.—184.

Ordered, That the further consideration of the report of the committee of the whole Convention be postponed until to-morrow.

After proceeding on another business which had been assigned them, (fixing on a seat of government) the Convention adjourned till to-morrow morning six o'clock.

S A T U R D A Y, A U G U S T 2, 1788.

The Convention met according to adjournment.

The report of the committee of the whole Convention, according to order, was taken up and read in the same words as on yesterday; when it was moved by Mr. *Person*, and seconded by Mr. *Mason*, that the Convention do concur therewith, which was objected to by Mr. *A. MacLaine*. The question being put, "Will the Convention concur with the report of the committee of the whole Convention or not?" It was carried in the affirmative. Whereupon Mr. *Davie* moved for the yeas and yeas, and was seconded by Mr. *Cabarrus*. They were accordingly taken: And those who voted yesterday against the amendment, voted for concurring with the report of the committee—those who voted in favour of the amendment now voted against a concurrence with the report. [See their names page 278.]

On motion by Mr. *Willie Jones*, and seconded by Mr. *James Galloway*, the following resolution was adopted by a large majority, viz.

Whereas this Convention has thought proper neither to ratify nor reject the Constitution proposed for the government of the United States; and as Congress will proceed to act under the said Constitution, ten states having
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ratified the same, and probably lay an impost on goods imported into the said ratifying states:

Resolved, That it be recommended to the Legislature of this state, that whenever Congress shall pass a law for collecting an impost in the states aforesaid, this state enact a law for collecting a similar impost on goods imported into this state, and appropriate the money arising therefrom, to the use of Congress.

On a motion made by Mr. *Willie Jones*, and seconded by Mr. *James Galloway*,

Resolved unanimously, That it be recommended to the General Assembly to take effectual measures for the redemption of the paper currency, as speedily as may be, consistent with the situation and circumstances of the people of this state.

On a motion made by Mr. *Willie Jones*, and seconded by Mr. *James Galloway*,

Resolved unanimously, That the Honourable the President be requested to transmit to Congress, and to the Executive of New-Hampshire, Massachusetts, Connecticut, Rhode-Island, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, South-Carolina, and Georgia, a copy of the resolution of the committee of the whole Convention on the subject of the Constitution proposed for the government of the United States, concurred with by this Convention, together with a copy of the resolutions on the subject of impost and paper money.

The Convention afterwards proceeded to the business of fixing the seat of government, and on Monday, August 4, adjourned *sine die*.

☞ The person who took the debates, having had a very inconvenient seat in the gallery and having been frequently molested by the noise made in the gallery and below, is afraid that there may be some inaccuracies and omissions in them. But he can truly assure the gentlemen who spoke in Convention in particular, and the public in general, that he paid the strictest and most inviolable regard to justice and impartiality, nor was he actuated by any other motive whatsoever.



